REQUEST FOR PROPOSAL

For

DEVELOPMENT OF INFRASTRUCTURE WORKS,INCLUDING 15 MLD SEWAGE TREATMENT PLANT BASED ON OPEN TECHNOLOGY AND ALLIED WORKS ON DESIGN, BUILD AND OPERATE BASIS WITH OPERATION AND MAINTENANCE OF 5 YEARS AT BORSOLA BEEL IN GUWAHATI

Volume III A: Special Conditions of Contract

Client:

Guwahati Smart City Limited,
Guwahati, Assam

DOCUMENT NO.: 10477A-CV-3055-3601

SPECIAL CONDITIONS OF CONTRACT

CONTRACT DATA shall be read as Appendix to Tender

CLAUSE 1 GENERAL PROVISIONS

Sub Clause 1.1 Definitions

1.1.10(a) "**Contract**" means these Conditions of Contract (Parts I and II), the Employer's Requirements, the Tender, the Contractor's Proposal, the Schedules, the Letter of Acceptance, the Contract Agreement (if completed) and such further documents as may be expressly incorporated in the Letter of Acceptance or Contract Agreement (if completed).

For the purposes of defining the different activities and obligations under the Contract, the Contract will be comprised of a "**Works Contract**" and an "**O&M Contract**", as defined in the following Sub-paragraphs 1.1.10(b) and (c), respectively; such definitions are for convenience only and shall not affect the rights or obligations of the Employer or the Contractor under the Contract.

1.1.1.10(b) "**Works Contract**" means that portion of the Contract that relates to the **design, submittals, procurement, construction, fabrication, installation, testing, trial run, and commissioning of the Works or components of the Works, and the remedying of any defects**, but excluding Operation and Maintenance, in accordance with the provisions of the Contract.

1.1.1.10(c) "**O & M Contract**" means that portion of the Contract that relates to the **Operation and Maintenance of the Works for the Operation and Maintenance Period**, as defined in the Appendix to Tender, but excluding the Works Contract, in accordance with the provisions of the Contract.

1.1.11 **"Contract Agreement"** means the Contract Agreement (if completed) referred to in Sub-Clause 1.6 [*Contract Agreement*].

1.1.75 **"Tender"** means the Letter of Tender and all other documents which the Contractor submitted with the Letter of Tender, as incorporated in the Contract. The word tender is synonymous with Bid and their derivatives, Bidder/Tenderer, Bid/Tender, Bidding/Tendering as well as the words Tender Documents and Bid Documents are synonymous.

1.1.78 (i) "**Time for Completion of Works**" means the time period, starting from the Commencement Date, within which Contractor is required by Contract to complete the Works. The numerical value for Time for Completion of Works is specified in Appendix to Tender.

(ii) "**Operation and Maintenance Period**" means the time period during which the Contractor shall be fully responsible for operation and maintenance of the Works, starting from the date of completion of the Works as certified by the Employer's Representative. The numerical value for Operation and Maintenance Period is specified in Appendix to Tender.

1.1.13 "**Final Contract Completion Certificate**" means the certificate issued by the Employer's Representative upon satisfactory completion of the Operation and Maintenance responsibilities under Sub-Clause 8.6[*Contract Completion Certificate*].

1.1.16(a) "**Contract Price**" means the price as defined in Sub Clause 14.1[*The Contract Price*], and includes the adjustments in accordance with the Contract.

For the purposes of determining payments under the Contract and, where applicable, other obligations, the Contract Price shall be subdivided into a "**Works Contract Price**" and "**O&M Contract Price**", as defined in the following Sub paragraphs 1.1.16(b) and (c), respectively.

The total "**Contract Price**" will be the sum of the Works Contract Price and the O&M Contract Price.

1.1.16(b) "**Works Contract Price**" means that portion of the Contract Price payable to the Contractor for performance of the Works Contract in accordance with the provisions of the Contract. The **Works Contract Price** will be the total of the amounts for carrying out the Works, as set out in Volume III Schedule of Prices,.

1.1.16(c) "**O&M Contract Price**" means that portion of the Contract Price payable to the Contractor for performance of the O&M Contract in accordance with the provisions of the Contract. The **O&M Contract Price** will be the total amount for operation and maintenance during the O&M period, as set out in Volume III, Schedule of Prices, under Schedule for Operation and Maintenance.

1.1.61 "**Permanent Works**" means all Civil, Mechanical, Electrical, Instrumentation and Control, and all allied components necessary for fully functional and operational installations and facilities capable of meeting all performance and other requirements specified in Volume II of Bid Documents.

1.1.84 "**Facilities**" means the Works executed and completed by the Contractor after trial run and commissioning, and remedying defects therein in terms of the Contract.

1.1.85 "**Operations and Maintenance**" means performance of any and all tasks and provision of any and all things necessary for the safe and efficient functioning of the Works in compliance with all applicable regulations and the O&M Contract. This includes but is not limited to supply of all labor, equipment, materials, fuel and other consumables, and all other necessary things.

Sub-Clause 1.5 Priority of Documents

1. the Contract Agreement (including addenda, clarification, when signed by all parties concerned)
2. the Letter of Acceptance
3. Volume III A : Special Conditions of Contract
4. Volume III : General Conditions of Contract
5. Volume II Works Requirement / Technical Specification
6. Volume I- Instruction to Bidders
7. The Bid (accepted Price Proposal)
8. Volume IV: Bid Drawings
9. Completed Technical Schedules
10. Bidder's Technical Proposal other than Completed Technical Schedules
11. Any other documents issued by the Employer before signing the Contract Agreement and forming the part of the Contract

Sub-Clause 1.6 Contract Agreements

"A Contract Agreement in the form annexed, with such modifications as may be necessary to record the agreement reached, shall be executed within the time period. The costs of stamp duties and similar charges imposed by the law shall be borne by the Contractor."

"Not signing the Contract Agreement for any reason whatsoever shall not affect the contract entered into by the Contractor and the Employer by the Letter of Tender and the Letter of Intent issued by them respectively".

The Time period for signing the Contract agreement shall be within 5 working days after receipt of Performance Security(10% of Contract Value) from the successful bidder.

Sub-Clause 1.8 Assignments

Neither Party shall assign the whole or any part of the Contract or any benefit or interest in or under the Contract. However, either Party:

(a) may assign the whole or any part with the prior agreement of the other Party, at the sole discretion of such other Party and

(b) may, as security in favor of a bank or financial institution, assign its right to any monies due, or to become due, under the Contract.

"Any assignment in terms of Sub-paragraph (b) above shall be subject to the condition that the bank or financial institution will not have any rights under or in relation to the Contract, except to direct that all or any payments that are offered to be made by the Party liable to make such payments be made to the person or to the account designated by the bank or financial institution."

Sub-Clause 1.9 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 in a document which was prepared for use in performing work under the Contract, the Party shall promptly give notice to the other Party of such error or defect.

"Failure to issue such notice by the Employer or the Employer's Representative to the Contractor in respect of any error in the Contractor's Documents shall not in any manner relieve the Contractor of its obligation to ensure the correctness and accuracy of the Contractor's Documents, and their compliance with the requirements of the Contract."

CLAUSE 2 THE EMPLOYER

Sub-Clause 2.1 Right of Access to the Site

The Employer shall give the Contractor right of access to, and licensee possession of, all parts of the Site starting from the "Date of Access to Site". The right and possession may not be exclusive to the Contractor. If, under the Contract, the Employer is required to give (to the Contractor) licensee possession of any foundation, structure, plant, or

means of access, the Employer shall do so at the time and in the manner stated in the Bid Documents. If no such information is provided in the Bid Documents, the Employer shall give the Contractor right of access to, and licensee possession of, the Site at such times as necessary in accordance with the programme submitted under Sub-Clause 8.3 [*Programme*]. However, the Employer may withhold any such right or licensee possession until the Performance Security has been received.

If the Contractor suffers delays as a result of a failure by the Employer to give any such right or licensee possession in accordance with the Contract, the Contractor shall give notice to the Employer's Representative and, subject to Sub-Clause 20.1[*Contractor's Claims*], shall be entitled to

(a) An extension of time for any such delay, if completion is or will be delayed, under sub-clause 9.3 (extension of Time for completion of Design Build) and

(b) Contractor will not be entitled for any additional payment and other costs due to such delays.

There will be no claim for such financial implications to the Contractor.

CLAUSE 3 THE EMPLOYER'S REPRESENTATIVE

Sub-Clause 3.1 Employer's representative Duties and Authority

The Employer shall appoint the Employer's Representative prior to the signing of the Contract, who shall be suitably qualified and experienced and who shall carry out the duties assigned to him in the Contract. The Employer's Representative's staff shall include suitably qualified engineers and other professionals who are competent to carry out these duties.

The Employer's Representative shall have no authority to amend the Contract.

The Employer's Representative may exercise the authority attributable to the Employer's Representative as specified in or necessarily to be implied from the Contract.

Whenever the Employer's representative exercises a specified authority for which the Employer's approval is required, then such exercise of authority shall be valid for the purposes of this Contract only if it is accompanied by approval from the Employer.

"The Employer's representative shall obtain specific written approval of the Employer before taking any of the following actions under the respective clauses of the Contract:

(a) determining value, cost, or extension of time under Sub-clause 3.5 [*Determinations*],

(b) approving Sub-contracting of any part of the Works under Sub-Clause 4.5.[*Nominated Subcontractors*],

(c) granting an extension of the time for completion under Sub-Clause 9.3 [*Extension of Time for Completion*],

(d) suspending progress of part or all of the Works under Sub-Clause 9.7 [*Suspension of Works*]

(g) issuing a **Final Contract Completion Certificate** for Completion of the Operations and Maintenance Services under Sub-Clause 8.6 [*Completion of the Operations and Maintenance Services*],

(h) issuing a variation under Clause 13 [*Variations and Adjustments*],

(i) determining the validity of any claims made by the Contractor under Sub-Clause 20.1 [*Contractor's Claims*].

Notwithstanding the obligation to obtain Employer's approval as set out in the preceding paragraph, if, in the sole opinion of the Employer's Representative, an emergency occurs affecting life-safety or the safety of the Works or of adjoining property, the Employer's Representative may, without relieving the Contractor of any of its duties and responsibilities under the Contract, instruct the Contractor to execute all such work or to do all such things as may, in the sole opinion of the Employer's Representative, be necessary to address the emergency. The Contractor shall forthwith comply with the instructions of the Employer's Representative despite the absence of approval of the Employer. The Employer's Representative shall determine whether the emergency situation was caused by the Contractor's actions or lack thereof or whether it was beyond the Contractor's control and make a recommendation to the Employer regarding extra costs payable to the Contractor, if any, for addressing the emergency situation. The Employer will make the final determination regarding whether or not any additional payments will be made to the Contractor."

Notwithstanding anything stated in this Contract, the Employer's Representative being treated as an Employee, agent or representative of the Employer for the purposes of this Contract, shall not be construed in any manner whatsoever for the purpose of attributing to the Employer any act, omission, determination, certification, or evaluation of the Employer's Representative under or in relation to this Contract and the Employer shall be entitled to dispute any or all such acts, omissions, determinations, certifications, or evaluations made by the Employer's Representative as provided under this Contract, either before the DAB or by arbitration.

Sub-Clause 3.3 Instructions of the Employer's representative

The Employer's Representative may at any time issue written instructions to the Contractor to perform tasks that may be necessary for proper execution of the Works and/or the remedying of any defects, all in accordance with the Contract. The Contractor shall promptly comply with such instructions. Failure to so comply may result in delays in the payments associated with the work components in question.

Sub-Clause 3.4 Replacement of Employer's representative

If the Employer intends to replace the Employer's Representative, the Employer shall, not less than 42 days before the intended date of replacement,give Notice to the Contractor of the name, address and relevant experience of the intended replacement Employer's Representative.

The Employer shall not replace the Employer's Representative with a person against whom the Contractor raises reasonable objection by Notice to the Employer, with supporting particulars.

The Employer's representative shall serve as an agent or a representative of the Employer. Mere change in the incumbent of the position of the Employer's Representative by reason of transfer, retirement or otherwise shall not be construed as replacement of the Employer's Representative for the purpose of this Contract.

Sub-Clause 3.6 Meetings

"The Employer's Representative or the Contractor may require the other to attend meetings as necessary in order to discuss matters related to the Works or Operation and Maintenance. The party initiating the meeting shall provide a written agenda to the other party no less than three (3) working days prior to the date of the meeting, unless the meeting is required to address an emergency. The party initiating the meeting shall prepare meeting minutes documenting the proceedings of such meetings and supply copies of the minutes to those attending the meetings and to the Employer. The minutes shall assign responsibilities for any actions to be taken in accordance with the Contract."

Note:- The word Engineer in Charge / Engineer / Project Manager / PMC is synonymous with Employer's Representative.

CLAUSE 4 THE CONTRACTOR

Sub-Clause 4.1 Contractor's General Obligations

"The Contractor shall check the design criteria and calculations (if any) included in the Bid Documents and satisfy itself regarding their accuracy and adequacy. Contractor shall meet the minimum design and sizing requirements specified in the Bid Documents – a design that does not meet such minimum requirements shall not be acceptable and will result in rejection of the bid as non-responsive. Further, if Contractor believes that the minimum design and sizing requirements specified are not adequate to meet the minimum performance requirements specified, then Contractor shall make whatever upward adjustments to the design and sizing it deems necessary to meet the performance requirements and include these in the bid price. Nothing extra will be paid for same. Contractor assumes full responsibility for meeting the specified performance requirements and ensuring the adequacy of the Works for this purpose."

The Contractor shall design, execute and complete the Works and provide the Operation Service in accordance with the Contract and shall remedy any defects in the Works. When completed, the Works shall be fit for the purposes for which the Works are intended as defined in the Contract, and the Contractor shall be responsible for ensuring that the Works remain fit for such purposes during the Operation Service Period.

The Contractor shall provide the Plant and Contractor's Documents specified in the Contract, and all Contractor's Personnel, Goods, consumables and other things and services, whether of a temporary or permanent nature, required to meet the Contractor's obligations under the Contract.

The Works shall include any work which is necessary to satisfy the Employer's Requirements, Contractor's Proposal and Schedules, or is implied by the Contract, and all works which (although not mentioned in the Contract) are necessary for stability or for the completion, or safe and proper operation of the Works.

The Contractor shall be responsible for the adequacy, stability and safety of all Site operations, of all methods of construction and of all the Works during both the Design-Build Period and the Operation Service Period.

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

The Contractor shall attend all meetings as reasonably required by the Employer or the Employer's Representative.

Sub-Clause 4.2 Performance Security

"The Contractor shall provide a Performance Security at his cost for its proper performance of the Contract, to be delivered to the Employer within 15 days after the receipt of the Letter of Intent.The Performance Security will be as specified in the Appendix to Tender, and shall be in the form of an unconditional and irrevocable bank guarantee issued by a Nationalized bank having branch at Guwahati in the format prescribed in Tender documents payable on demand, for the due performance and fulfillment of the contract by the bidder.The Performance Security shall be valid until the Contractor has fully and satisfactorily completed all of its obligations under Contract. Performance security shall be valid upto Completion of Operation and Maintenance period

Sub-Clause 4.3 Contractor's Representative

The Contractor shall appoint the Contractor's Representative and shall give him all authority necessary to act on the Contractor's behalf under the Contract.

Unless the Contractor's Representative is named in the Contract, the Contractor shall, prior to the Commencement Date, submit to the Employer's Representative for consent the name and particulars of the person the Contractor proposes to appoint as Contractor's Representative. If consent is withheld or subsequently revoked, or if the appointed person fails to act as Contractor's Representative, the Contractor shall similarly submit the name and particulars of another suitable person for such appointment.

The Contractor shall not, without the prior consent of the Employer's Representative, revoke the appointment of the Contractor's Representative or appoint a replacement.

The whole time of the Contractor's Representative shall be given to directing the Contractor's performance of the Contract. If the Contractor's Representative is to be temporarily absent from the Site during the execution of the Works or provision of the Operation Service, a suitable replacement person shall be appointed, subject to the Employer's Representative's prior consent, and the Employer's Representative shall be notified accordingly.

The Contractor's Representative shall, on behalf of the Contractor, receive instructions under Sub-Clause 3.3 [*Instructions of the Employer's Representative*].

The Contractor's Representative may delegate any powers, functions and authority to any competent person, and may at any time revoke the delegation. Any delegation or revocation shall not take effect until the Employer's Representative has received prior Notice signed by the Contractor's Representative, naming the person and specifying the powers, functions and authority being delegated or revoked.

The Contractor's Representative and all these persons shall be fluent in the language for communications defined in Sub-Clause 1.4 [*Law and Language*].

If the Contractor's Representative is not fluent in the English language, the Contractor shall make a competent interpreter available during all working hours for the entire duration of the Contract.

Sub-Clause 4.4 Subcontractors

Any proposed subcontracts shall be subject to the following conditions:

(a) for all subcontracts, whether proposed in the tender or at a later date, the Contractor shall, submit a list of proposed Subcontractors along with their credentials

including technical capability, financial capability, and experience in works similar to those which are proposed to be subcontracted;

(b) the Employer's Representative will scrutinize the proposals submitted by the Contractor and approval of the Subcontractors will be based on their overall capacity to execute the works proposed to be subcontracted;

(c) the prior approval of the Employer's Representative shall be obtained for all proposed Subcontractors, as well as for the proposed agreement(s) between the Contractor and such proposed Subcontractors;

(d) the Contractor shall submit a copy of the proposed agreement between the Contractor and the proposed Subcontractor, and such agreement shall require approval of the Employer's Representative.

The Contractor shall be responsible for ensuring that no unauthorized subcontractors are permitted to work on any part of the Site. If, at any stage during execution, a subcontractor is found working at the Site without prior approval of the Employer's Representative, then the work being done by that subcontractor shall be stopped, the subcontractor shall be expelled from the Site, and the Employer's Representative and Employer will jointly determine what components of the subcontractor's work are acceptable, what components shall be reworked or remedied by the Contractor, and what payment, if any, is payable for the subcontractor's work.

The act of subcontracting any part or component of the Works shall not relieve the Contractor of his overall responsibilities under the Contract. The Contractor shall be responsible for compliance by all Subcontractors with all the provisions of the Contract. The Contractor shall be responsible for the acts or defaults of any Subcontractor, his agents, or employees, as fully as if they were the acts or defaults of the Contractor, his agents, or employees.

In the event that the Employer's Representative determines that any Subcontractor's performance with respect to progress, quality, or Contract compliance is unsatisfactory, then the Contractor will be required to remove such Subcontractor from the Site and either undertake the Works itself or provide a suitably qualified replacement. If any delays occur as a result, the Contractor will be responsible for taking any necessary actions to make up the lost time, for which no additional payments or extension of time will be granted."

The Contractor shall carry out all Operation and Maintenance of the Works solely by himself and shall not sub-contract any part of the O&M Contract.

Sub-Clause 4.6 Co-operation

The Contractor shall, as specified in the Contract or as instructed by the Employer's Representative, allow appropriate opportunities for carrying out work to:

(a) the Employer's Personnel;

(b) any other contractors employed by the Employer; and

(c) the personnel of any legally constituted public authorities; who may be employed in the execution on or near the Site of any work not included in the Contract.

Any such instruction shall constitute a Variation if and to the extent that it causes the Contractor to incur Unforeseeable cost. Services for these personnel and other contractors may include the use of Contractor's Equipment, Temporary Works or access arrangements which are the responsibility of the Contractor.

The Contractor shall be responsible for his construction and operation activities on the Site, and shall co-ordinate his own activities with those of other contractors to the extent (if any) specified in the Employer's Requirements.

If, under the Contract, the Employer is required to give to the Contractor access of any foundation, structure, plant or means of access in accordance with Contractor's Documents, the Contractor shall submit such documents to the Employer's Representative in the time and manner stated in the Employer's Requirements.

"The Contractor shall be responsible for the co-ordination and proper execution of the Works, including co-ordination with other contractors, sub-contractors, and organizations to the extent specified in the Employer's Requirements".

Sub-Clause 4.8 Safety Procedures

Unless otherwise stated in the Employer's Requirements, the Contractor shall, from the date of the Employer providing right of access to or licensee possession of the Site to the Contractor under Sub Clause 2.1 [*Right of Access to the Site*], until completion of its obligations under the Contract (including the O&M Contract), shall:

(a) comply with all applicable health and safety regulations,

(b) ensure the health and safety of all persons present on the Site in an authorized capacity,

(c) use reasonable efforts to keep the Site and the Works clear of debris or unnecessary obstructions,

(d) provide lighting, and security for the Site and the Works

(e) provide any Temporary Works (including roadways, walkways, guardrails, and fences) that may be necessary for performance of the Contractor's work, for the use and protection of the public and of the Employers and occupiers of adjacent land.

"The Contractor shall submit, within 14 days of signing of the Contract Agreement, the required Safety Plan developed in accordance with the requirements set out in Volume II for approval by the Employer's Representative. The Employer's Representative will either approve the submittal or provide comments thereon to the Contractor within 14 days of submission by the Contractor. The Employer's Representative's, approval, disapproval, comments, or failure to provide any of these to the Contractor, shall in no way relieve the Contractor of any of its obligations or responsibilities under the Contract."

Sub-Clause 4.9 Quality Assurance

"The Contractor shall institute a Quality Assurance and Quality Control (QA/QC) system in accordance with the requirements set out in Volume II to demonstrate compliance with the requirements of the Contract.

The Contractor shall submit, within 14 days of signing of the Contract Agreement, the required Quality Assurance and Quality Control (QA/QC) Program for approval by the Employer's Representative. The Employer's Representative will either approve the submittal or provide comments thereon to the Contractor within 14 days of submission by the Contractor. The Employer's Representative's, approval, disapproval, comments, or failure to provide any of these to the Contractor, shall in no way relieve the Contractor of any of its obligations or responsibilities under the Contract."

The Contractor, prior to commencement of work at the Site, shall set up his own laboratory, with prior notification to the Employer's Representative. The calibration of the laboratory equipment and instruments shall be certified by agencies approved by the Employer's Representative. Laboratory equipment shall be properly maintained and calibrated throughout the period of the Contract by the Contractor at his own expense.

The Contractor shall give the Employer's Representative reasonable advance notice prior to conducting any tests required by the Bid Documents, which the Employer's Representative may choose to witness at his discretion. The Employer's Representative will also inspect the laboratory if deemed necessary and the Contractor shall provide adequate facilities to the Employer's Representative that may be necessary for witnessing testing or for independent verification of the accuracy and adequacy of the facilities and equipment. The list of mandatory equipment to be provided at the Site by the Contractor is indicated in Volume II.

Compliance with the QA/QC system shall not relieve the Contractor of any of his duties, obligations, or responsibilities under the Contract.

Sub-Clause 4.10 Site Data

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

The Employer does not warrant either the sufficiency or accuracy of site data provided in the Bid Documents or elsewhere. The Contractor shall be fully responsible for independently verifying or obtaining any and all site data that Contractor deems necessary to prepare the bid. Any Site data in Employer's possession that is not included in the Bid Documents will be available for inspection at the Employer's address provided in the Appendix to Tender.

The Contractor shall be deemed to have obtained all necessary information as to risks, contingencies and other circumstances which may influence or affect the Tender or Works or the provision of the Operation Service. The Contractor shall be deemed to have inspected and examined the Site, its surroundings, the above data and other available information, and to have been satisfied before submitting the Tender as to all relevant matters, including (without limitation):

(a) the form and nature of the Site, including sub-surface conditions;

(b) the hydrological and climatic conditions;

(c) the extent and nature of the work and Goods necessary for execution and completion of the Works Contract and the O&M Contract

(d) the Laws, procedures of regulatory and other authorities and labor practices of the Country; and

(e) the Contractor's requirements for access, accommodation, facilities, personnel, power, transport, water and other services.

Sub-Clause 4.11 Sufficiency of the Accepted Contract Amount

The Contractor shall be deemed to:

(a) have satisfied himself as to the correctness and sufficiency of the Accepted Contract Amount; and

(b) have based the Accepted Contract Amount on the data, interpretations, necessary information, inspections, examinations and satisfaction as to all relevant matters referred to in Sub-Clause 4.10 [*Site Data*], and any further data relevant to the Contractor's design.

The Accepted Contract Amount covers all the Contractor's obligations under the Contract and all things necessary for the proper design, execution and completion of the Works, the remedying of any defects and the provision of the Operation Service and satisfactory completion of the O&M Contract."

Sub-Clause 4.12 Unforeseeable Physical Conditions

In this Sub-Clause, "physical conditions" means natural physical conditions and manmade and other physical obstructions and pollutants, which the Contractor encounters at the Site when executing the Works, including sub-surface and hydrological conditions but excluding climatic conditions.

If the Contractor encounters adverse physical conditions which he considers to have been Unforeseeable, the Contractor shall give Notice to the Employer's Representative as soon as practicable.

This Notice shall describe the physical conditions, so that they can be inspected by the Employer's Representative, and shall set out the reasons why the Contractor considers them to be Unforeseeable. The Contractor shall continue executing the Works, using such proper and reasonable measures as are appropriate for the physical conditions, and shall comply with any instructions which the Employer's Representative may give. If an instruction constitutes a Variation, Clause 13 [*Variations and Adjustments*] shall apply.

If and to the extent that the Contractor encounters physical conditions which are Unforeseeable, gives such a Notice, and suffers delay due to these conditions, the Contractor shall be entitled subject to Sub-Clause 20.1 [*Contractor's Claims*] to:

(a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 9.3 [*Extension of Time for Completion of Design-Build*]; and

After receiving such Notice and inspecting and/or investigating these physical conditions, the Employer's Representative shall proceed in accordance with Sub- Clause 3.5 [*Determinations*] to agree or determine (i) whether and (if so) to what extent these physical conditions were Unforeseeable, and (ii) the matters described in subparagraphs (a) above.

The Employer's Representative may take account of any evidence of the physical conditions foreseen by the Contractor when submitting the Tender, which may be made available by the Contractor, but shall not be bound by any such evidence.

Sub-Clause 4.17 Contractor’s Equipment

Unless otherwise stated in the Employer’s Requirements, the Contractor shall provide all Contractor's Equipment necessary to fully and satisfactorily complete the Works Contract and the O&M of the facilities. When brought on to the Site, Contractor's Equipment shall be deemed to be exclusively intended for the execution of the Works and provision of the Operation Service. The Contractor shall not remove from the Site any major items of Contractor's Equipment without the consent of the Employer's Representative. However, consent shall not be required for vehicles transporting Goods or Contractor's Personnel off Site.

"The Contractor shall submit, within 14 days of signing the Contract Agreement, the proposed Deployment Program for all necessary Equipment, Plant, and Machinery to be used for construction, for approval by the Employer's Representative. Such Deployment Program shall be developed using normally available commercial project management software and shall show equipment, plant, and machinery at micro level detail, along with Bar charts, essential for systematic and professional management of all construction works. The Employer's Representative will either approve the submittal or provide comments thereon to the Contractor within 14 days of submission by the Contractor. The Employer's Representative's, approval, disapproval, comments, or failure to provide any of these to the Contractor, shall in no way relieve the Contractor of any of its obligations or responsibilities under the Contract."

Sub-Clause 4.19 Electricity and Water

For performance of the Works Contract and during Operation and Maintenance Period

The Contractor shall be responsible for provision of all power, water, and other services he may require for performance of the Works Contract. This includes contacting the appropriate utility or service providers and applying for connections as necessary. At its sole discretion, the Employer may provide a water connection to the Contractor on an "as is" basis, with no guarantee of any kind provided regarding the quality, quantity, or availability of the water whatsoever. Should the Contractor choose to avail himself of this facility, he shall, at his own risk and cost, provide all piping, fittings, and other equipment necessary for his use and for metering of the water and any treatment needed. The Contractor shall pay the Employer for water consumed at the prevailing commercial rate. The Contractor is to ensure that the quality of Water remains suitable for the purpose for which it is intended.

For performance of Tests on Completion and the O&M Contract:

Provision of electricity during Tests on Completion and during the Operation and Maintenance Period shall be the responsibility of the ContractorProvision of water for any and all uses in the Works during the Operation and Maintenance period shall be the responsibility of the Contractor.

Sub-Clause 4.21 Progress Reports

Monthly Progress Reports, along with photographs depicting the progress achieved in the month, shall be prepared by the Contractor in a format approved by the Employer's Representative and the Employer and submitted to the Employer's Representative. The first report shall cover the period up to the end of the first calendar month following the Commencement Date. Reports shall be submitted monthly thereafter, each within 7 days after the last day of the period to which it relates.

Reporting on progress shall continue until the Contractor has received the Contract Completion Certificate. Details of the content of the progress reports for the Design-Build Period and the Operation Service Period shall be as specified in the Employer's Requirements.

Unless otherwise stated or agreed, each progress report shall include:

(a) charts and detailed descriptions of progress, including each stage of design, Contractor's Documents, procurement, manufacture, delivery to Site, construction or replacement, erection, testing, commissioning, trial operation and provision of Operation Service;

(b) photographs showing the status of manufacture or replacement and of progress on the Site;

(c) for the manufacture or replacement of each main item of Plant and Materials, the name of the manufacturer, manufacture location, percentage progress, and the actual or expected dates of:

i) Commencement of manufacture,
(ii) Contractor's inspections,
(iii) Tests, and
(iv) Shipment and arrival at the Site;

(d) the details described in Sub-Clause 6.10 [*Records of Contractor's Personnel and Equipment*];

(e) copies of quality assurance documents, test results and certificates of Materials;

(f) list of Variations, Notices given under Sub-Clause 20.1 [*Contractor's Claims*] and Notices given under Sub-Clause 20.2 [*Employer's Claims*];

(g) safety statistics, including details of any hazardous incidents and activities relating to environmental aspects and public relations; and

(h) comparisons of actual and planned progress, with details of any events or circumstances which may jeopardize the completion in accordance with the Contract, and the measures being (or to be) adopted to overcome delays.

The particular reporting requirements during the Operation Service Period shall be as specified in the Employer's Requirements.

"The Special reporting requirements during the Operation and Maintenance Period shall be as specified in the Employer's Requirements."

CLAUSE 5 DESIGN

Sub-Clause 5.1 General Design Obligations

The Contractor shall carry out, and be responsible for, the design of the works, including any site surveys, subsoil investigations, materials testing and all other things necessary for proper planning and design. Design shall be prepared by qualified designers who are engineers or other professionals who comply with the criteria (if any) stated in the Employer's Requirements. Unless otherwise stated in the Contract, the Contractor shall submit to the Employer's Representative for consent the name and particulars of each proposed designer and design Subcontractor.

The Contractor warrants that he, his designers and design Subcontractors have the experience and capability necessary for the design. The Contractor undertakes that the designers shall be available to attend discussions with the Employer's Representative at all reasonable times.

The Contractor shall establish a design liaison office at Guwahati City within 28 days from the Commencement Date to facilitate preparation and submission of designs, drawings, construction documents, etc., for review and approval by the Employer's Representative. The design liaison office shall preferably be located near the Employer's office to facilitate communications and frequent interactions with the Employer's Representative and the Employer. The Contractor shall provide full-time design staff and continuously maintain the design liaison office until such time as all necessary designs and Construction Documents have been completed, reviewed, and approved by the Employer's Representative.

The Contractor will be fully responsible for ensuring that its designs, drawings, and construction documents satisfy all requirements for constructing Works that are complete and fully functional in all respects.

Sub-Clause 5.2 Contractor's Documents

The Contractor's Documents shall comprise the technical documents specified in the Employer's Requirements, documents required to satisfy all regulatory approvals, and the documents described in Sub-Clause 5.5 [*As-Built Documents*] and Sub-Clause 5.6 [*Operation and Maintenance Manuals*]. Unless otherwise stated in the Employer's Requirements, the Contractor's Documents shall be written in the language for communications defined in Sub-Clause 1.4 [*Law and Language*].

The Contractor shall prepare all Contractors' Documents, and shall also prepare any other documents necessary to instruct the Contractor's Personnel. The Employer's Personnel shall have the right to inspect the preparation of all these documents, wherever they are being prepared.

If the Employer's Requirements describe the Contractor's Documents which are to be submitted to the Employer's Representative for review leading to consent and/or for approval, they shall be submitted accordingly, together with a Notice as described below. The Employer's Representative gives his consent to a document when he is satisfied that the Contractor's Documents conform to the Employer's Requirements. In the following provisions of this Sub-Clause, (i) "review period" means the period required by the Employer's Representative for review leading to consent and (if so specified) for approval, and (ii) "Contractor's Documents" exclude any documents which are not specified as being required to be submitted for review leading to consent and/or for approval..

Unless otherwise stated in the Employer's Requirements or agreed with the Employer's Representative, each review period shall not exceed 21 days, calculated from the date on which the Employer's Representative receives a Contractor's Document and the Contractor's Notice. This Notice shall state that the Contractor's Document is considered ready for review leading to either approval (if so specified) or consent with regard to conformity with the Employer's Requirements, in accordance with this Sub-Clause and for use. The Notice shall also state that the Contractor's Document complies with the Contract, or the extent to which it does not comply.
The Employer's Representative may, within the review period, give Notice to the Contractor that a Contractor's Document fails (to the extent stated) to conform with the Contract. If a Contractor's Document so fails to conform, it shall be rectified, resubmitted and reviewed (and, if specified, approved) in accordance with this Sub- Clause, at the Contractor's cost. If such re-submission and review causes the Employer to incur additional costs, the Contractor shall, subject to Sub-Clause 20.2 [Employer's *Claims*], pay these costs to the Employer.

For each part of the Works, and except to the extent that the prior approval or consent of the Employer's Representative shall have been obtained:

(a) The Contractor shall submit, within 14 days of signing the Contract Agreement, the proposed "Submission and Anticipated Approval Programme" for all necessary Contractor's Documents for approval by the Employer's Representative. Such Program shall ensure availability of all construction documents on site in a timely manner, which is essential for systematic and professional management of all construction works. The Employer's Representative will either approve the submittal or provide comments thereon to the Contractor within 14 days of submission by the Contractor. The Employer's Representative's, approval, disapproval, comments, or failure to provide any of these to the Contractor, shall in no way relieve the

Contractor of any of its obligations or responsibilities under the Contract.
Construction on any component of the Works shall not commence until the Contractor receives from the Employer's Representative approval of all Contractor's Documents relevant to the design and construction of the component. If the Employer's Representative fails to respond to a Contractor's Document at the end of 14 days, despite the Contractor's written reminder at the end of the 21-day "review period", then the Employer's Representative shall be deemed to have approved that Document."

b) Execution of such part of the Works shall not commence prior to the expiry of the review the Contractor's Documents which are relevant to its design and execution;

(c) execution of such part of the Works shall be in accordance with those Contractor's Documents for which the Employer's Representative has given his consent as to the conformity with the Employer's Requirements, (and, if specified, approved); and

(d) if the Contractor wishes to modify any design or document which has previously been submitted for review (and, if specified, approval), the Contractor shall immediately give Notice to the Employer's Representative, accompanied by a written explanation of the need for such modification.
Thereafter, the Contractor shall submit revised documents to the Employer's Representative in accordance with the above procedure.

Any such consent and/or approval (where specified) (under this Sub-Clause or otherwise) shall not relieve the Contractor from any obligation or responsibility.

Sub-Clause 5.4 Technical Standards & Regulations

Unless otherwise stated, the design, the Contractor's Documents, the execution and the completed Works shall comply with the Country's technical standards, building, construction and environmental Laws, Laws applicable to the product being produced from the Works, and other standards specified in the Employer's Requirements, applicable to the Works, or defined by the applicable Laws.

All these Laws shall, in respect of the Works and each Section, be those prevailing when the Commissioning Certificate is issued in accordance with Sub-Clause 11.7 [*Commissioning Certificate*]. References in the Contract to published standards shall be understood to be references to the edition applicable on the Base Date, unless stated otherwise.

If changed or new applicable standards come into force in the Country after the Base Date, the Contractor shall give Notice to the Employer's Representative and (if appropriate) submit proposals for compliance. In the event that:

a) the Employer's Representative determines that compliance is required; and

b) the proposals for compliance constitute a variation,

then the Employer's Representative shall initiate a Variation in accordance with Claus 13 [*Variations and Adjustments*].

With respect to technical standards, National or International Standards other than those specified may be acceptable, subject solely to the Employer's Representative's approval.

CLAUSE 6 STAFF AND LABOUR

Sub-Clause 6.5 Working Hours

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

(a) Otherwise stated in the Contract;

(b) The Employer's Representative gives consent;

(c) The work is unavoidable, or necessary for the protection of life or property or for the safety of the Works, in which case the Contractor shall immediately advise the Employer's Representative; or

(d) Required for the proper fulfilment of the requirements of the Operation Service Period.

The above applies to the Works Contract. For the O&M Contract, working hours shall be 24 hours per day, every day of every year within the O&M Period."

Sub-Clause 6.7 Health and Safety

The Contractor shall at all times during the Contract Period 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.

In the event of any outbreak of illness of an epidemic nature, the Contractor shall comply with and/or carry out all such regulations, orders, and/or requirements as may be

applicable, including those imposed by various governments and the local medical or sanitary authorities."

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 execution of the Works and the Operation and Maintenance Period, the Contractor shall provide whatever is required by this person to exercise this responsibility and authority.

The Contractor shall send details of any accident to the Employer's Representative 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 Employer's Representative may reasonably require.

Sub-Clause 6.8 Contractor's Superintendence

For the complete Contract Period, the Contractor shall provide all necessary superintendence to plan, arrange, direct, manage, inspect, test and monitor the design and execution of the Works and the provision of the Operation Service in accordance with his obligations under the Contract.

Superintendence shall be given by a sufficient number of persons having adequate knowledge of the language for communications (defined in Sub-Clause 1.4 [*Law and Language*]) and of the operations to be carried out (including the methods and techniques required, the hazards likely to be encountered and methods of preventing accidents), for the satisfactory and safe execution of the Works and the provision of the Operation Service.

The Contractor shall submit, within 14 days of signing the Contract Agreement, the proposed Deployment Program for all key personnel as well as workers for superintendence of construction activities for approval by the Employer's Representative. Such Deployment Program shall show details of qualifications and experience of key personnel and the number of skilled/semi-skilled/unskilled workers to be deployed on a timeline, which is essential for proper superintendence and systematic and professional management of all construction works. The Employer's Representative will either approve the submittal or provide comments thereon to the Contractor within 14 days of submission by the Contractor. The Employer's Representative's, approval, disapproval, comments, or failure to provide any of these to the Contractor, shall in no way relieve the Contractor of any of its obligations or responsibilities under the Contract. At least seventy-five percent (75%) of the Contractor's Superintending staff shall have a working knowledge of the English language, or the Contractor shall have a sufficient number of competent interpreters available on site during all working hours."

None of the Contractor's Representative, supervisors, or labor staff shall be withdrawn from the Works without due notice being given to the Employer's Representative. Further, no such withdrawals shall be made if in the sole opinion of Employer's Representative, such withdrawals will jeopardize the progress and timely, successful completion of the Works.

Sub-Clause 6.10 Records of Contractor's Personnel and Equipment

The Contractor's Personnel shall be appropriately qualified, skilled and experienced in their respective trades or occupations. Details shall be submitted each calendar month, in a form approved by the Employer's Representative, until the Contractor has completed all work under both the Works Contract and the O&M Contract according to the terms of the Contract.

a) persists in any misconduct or lack of care;

(b) carries out duties incompetently or negligently;

(c) fails to conform with any provisions of the Contract; or

(d) Persists in any conduct which is prejudicial to safety, health, or the protection of the environment.

If appropriate, the Contractor shall then appoint (or cause to be appointed) a suitable replacement person.

During the Operation and Maintenance Period, the Employer shall be notified of any changes to the Personnel or Equipment at the end of each calendar month"

Sub-Clause 6.12 Foreign Staff and Labour

The Contractor may import such personnel as are required to execute the Works. The Contractor must ensure that all such personnel are provided with or otherwise obtain the required visas and work permits and comply with all legal requirements. The Contractor shall be responsible for all personnel who are foreign nationals for the duration of their engagement with the Contractor in connection with this Contract, and shall also be responsible for ensuring the return of such personnel at the end of the engagement to their previous engagement or domicile in or outside India."

Sub-Clause 6.13 Measures Against Insect & Pest Nuisance

The Contractor shall at all times take the necessary precautions to protect all staff and labor employed on the Site from insect and pest nuisance, and to reduce the dangers to public health and the general nuisance occasioned by the same. The Contractor shall provide its staff and labor with suitable prophylactics for the prevention of malaria and dengue fever, and take steps to prevent the formation of stagnant pools of water. The

Contractor shall comply with all the regulations of the local health authorities and shall arrange to spray thoroughly with approved insecticide all buildings erected on the Site. Such treatment shall be carried out at least once a year or as instructed by such authorities."

Sub-Clause 6.14 Alcoholic Liquors or Drugs

The Contractor shall not, other than in accordance with the Statutes, Ordinances, Government Regulations, or orders that may be in effect from time to time, import, sell, give, barter, or otherwise dispose of any alcoholic liquor or drugs, or permit or suffer any such importation, sale, gift, barter, or disposal by his Subcontractors, agents, staff, or labor."

Sub-Clause 6.15 Arms and Ammunition

The Contractor shall not give, barter, or otherwise dispose of any arms or ammunition of any kind or permit or suffer any such gift, barter or disposal by his subcontractors, agents, staff, or labor."

Sub-Clause 6.16 Festivals and Religious Customs

The Contractor shall in all dealings with his staff and labor show due regard for all recognized festivals, days of rest, and religious or other customs."

CLAUSE 7 PLANT, MATERIALS, AND WORKMANSHIP

Sub-Clause 7.1 Manner of Execution

The Contractor shall carry out the manufacture of Plant, the production and manufacture of Materials, and all other execution of the Works and Operation and Maintenance**:**

a) in accordance with the applicable Laws in the manner (if any) specified in the Contract;

(b) in a proper workmanlike and careful manner, in accordance with recognised good practice; and

(c) with properly equipped facilities and non-hazardous Materials, except as otherwise specified in the Contract.

The Contractor shall submit, within 14 days of signing the Contract Agreement, the proposed Procurement Program for all necessary Equipment, Plant, and Materials (including but not limited to Pumps, Motors, Compressor, Surge Vessels, Piping, Electrical Equipment, Structural Steel, Cement, Reinforcement Steel, Fuels, Lubricants, Spare Parts, etc.) to be incorporated into the Works for approval by the Employer's Representative. Such Procurement Program shall be developed using a normally available commercial project management software and shall show detailed planning and scheduling for placing of orders, inspections by the Contractor, Employer's Representative, Employer, and/or Third Party Agencies, as applicable, and

transportation plans and delivery schedules for all Equipment, Plant, and Materials to be incorporated into the Works as essential for systematic and professional management of all construction works. The Employer’s Representative will either approve the submittal or provide comments thereon to the Contractor within 14 days of submission by the Contractor. The Employer’s Representative’s, approval, disapproval, comments, or failure to provide any of these to the Contractor, shall in no way relieve the Contractor of any of its obligations or responsibilities under the Contract.

Sub-Clause 7.3 Inspection

The Employer's Personnel and other persons authorised by the Employer shall at all reasonable times:

(a) have full access to all parts of the Site and to all places from which natural materials are being obtained.

(b) during production, manufacture, and construction (at the Site and elsewhere), and during the O&M Period, be entitled to examine, inspect, measure, and test the materials and workmanship, and to check the progress of manufacture of Plant, production and manufacture of Materials, and Operation and Maintenance.

(c) carry out other authorised duties and inspections.

The Contractor shall give the Employer's Personnel and other persons authorised by the Employer full opportunity to carry out these activities, including providing access, facilities, permissions and safety equipment. No such activity shall relieve the Contractor from any obligation or responsibility.

The Contractor shall give Notice to the Employer's Representative whenever any work is ready and before it is covered up, put out of sight, or packaged for storage or transport. The Employer's Representative shall then either carry out the examination, inspection, measurement or testing without unreasonable delay, or promptly give Notice to the Contractor that the Employer's Representative does not require to do so. If the Contractor fails to give the Notice, he shall, if and when required by the Employer's Representative, uncover the work and thereafter reinstate and make good, all at the Contractor's cost.

Sub-Clause 7.4 Testing

This Sub-Clause shall apply to all tests on Plant, Materials and workmanship specified in the Contract.

The Contractor shall provide all apparatus, assistance, documents and other information, electricity, equipment, fuel, consumables, instruments, labour, materials, and suitably qualified and experienced staff, as are necessary to carry out the specified

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

The Employer's Representative may, under Clause 13 [*Variations and Adjustments*], vary the location or details of specified tests, or instruct the Contractor to carry out additional tests. If these varied or additional tests show that the tested Plant, Materials or workmanship is not in accordance with the Contract, the cost of carrying out this Variation shall be borne by the Contractor, notwithstanding other provisions of the Contract.

If the Employer's Representative does not attend at the time and place agreed, the Contractor may proceed with the tests, unless otherwise instructed by the Employer's Representative, and the tests shall then be deemed to have been made in the Employer's Representative's presence.

If the Contractor suffers delay in carrying out the tests and/or incurs cost from complying with these instructions or as a result of a delay for which the Employer is responsible, the Contractor shall give Notice to the Employer's Representative and shall be entitled, subject to Sub-Clause 20.1 [*Contractor's Claims*], to:

(a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 9.3 [*Extension of Time for Completion of Design-Build*]; and

(b) payment of any such Cost Plus Profit, which shall be included in the Contract Price.

After receiving this Notice, the Employer's Representative shall proceed in accordance with Sub-Clause 3.5 [*Determinations*] to agree or determine these matters.

The Contractor shall promptly forward to the Employer's Representative duly certified reports of the tests. When the specified tests have been passed, the Employer's Representative shall endorse the Contractor's test certificate, or issue a certificate to him, to that effect. If the Employer's Representative has not attended the tests, he shall be deemed to have accepted the readings as accurate.

Sub-Clause 7.7 Ownership of Plant and Materials

Each item of Plant and Materials shall, to the extent consistent with the Laws of the Country, become the property of the Employer at whichever is the earlier of the following times, free from liens and other encumbrances:

(a) when it is delivered to the Site;

(b) when the Contractor is paid the value of the Plant and Materials under Sub- Clause 9.9 [*Payment for Plant and Materials in Event of Suspension*]; and

(c) when the Contractor is paid the value of the Plant and Materials under Sub- Clause 14.6 [*Payment for Plant and Materials intended for the Works*].

Notwithstanding the provisions of the preceding paragraph of this Sub clause 7.7, the Contractor shall not be entitled to payment for Plant and Materials which are not in compliance with the Specifications or any other terms or requirements of this Contract.

Sub-Clause 7.8 Royalties

Unless otherwise stated in the Employer's Requirements, and in accordance with the prevailing rules and rates specified by the Government of Assam, the Contractor shall pay all applicable royalties, rents, and other payments to the relevant parties for:

(a) all Equipment, Plant, and Materials used in the Works, and the disposal of material from demolitions and excavations and of other surplus materials (whether natural or manmade), at the designated location as approved by the Employer Sub-Clause 7.9 Failure to Remedy Defects or to Complete Part of Works

If the Contractor fails to remedy any defect in the Plant, Materials, design, or workmanship, or if the Contractor fails to complete any part of the Works deemed necessary by the Employer within a reasonable time after being notified by the Employer's Representative, the Employer or the Employer's Representative may fix a date on or before which to remedy the defect or damage or to execute the part of the Works in question to the satisfaction of the Employer's Representative, and give the Contractor reasonable notice of such date."

If the Contractor fails to remedy the defect or damage or to complete the required part of the Works by the specified date the Employer may (at his sole discretion):

(a) carry out the work himself or by others, in a reasonable manner, and at the Contractor's risk and expense; the costs properly incurred by the Employer in remedying the defect or damage or in executing part of the Works shall be recoverable from the Contractor by the Employer and will be calculated based on the direct cost of any labor, equipment, materials, superintendence, and other services provided by the Employer for carrying out such work, as certified by the Employer's Representative, plus an administration fee of ten percent (10%) of the direct costs to cover overheads and other indirect costs; or

(b) require the Employer's Representative to determine and certify a reasonable reduction in the Contract Price; or

(c) if, in the sole opinion of the Employer, the defect, damage, or uncompleted work is such that the Employer has been deprived of substantially the entire benefit of the Works or parts of the Works, terminate the Contract with respect to such parts of the Works as cannot be put to the intended use: the Employer shall then be entitled to recover all sums paid for such parts of the Works, together with the cost of dismantling

the same, clearing the Site, and returning Plant and Materials to the Contractor, and the provisions of Clause 15 [Termination by Employer] will apply."
The cost due to the items '(a)' to '(c)' will be recovered from the Contractor. This cost is in addition to the maximum delay damages of 10% of works contract price as indicated in Appendix to Tender.

CLAUSE 8 COMMENCEMENT DATE, COMPLETION AND PROGARMME

The Contractor shall commence the design of the Works as soon as is reasonably possible after receipt of the Notice of the Commencement Date from the Employer's Representative, but in any event not later than the earlier of (i) 14 days after establishing the design liaison office, or (ii) 30 days after issue of Notice of commencement date. The Contractor shall commence the execution of the Works as soon as is reasonably possible after receipt of a notice to this effect from the Employer's Representative, but in any event not later than the earlier of (i) 21 days after commencing establishment of the Site offices and field laboratories, or (ii) 60 days after issue of Notice to Commence.

The Contractor shall commence the Operation and Maintenance services immediately after successful commissioning of the Works and issuance of the Taking-Over Certificate by the Employer. The Works will be handed over back to the Contractor for the purpose of Operation and Maintenance.

Sub-Clause 8.2 Time for Completion

The Contractor shall ensure that various components of the Works are executed in conformity with the Volume II Technical Specifications / Works requirement, and that the Works are fully completed within the Time for Completion specified in the Appendix to Tender.

The entirety of the Works shall be completed and shall have passed the Tests on Completion, trial run, and commissioning within the Time for Completion of the Works as specified in the Appendix to Tender. The Taking-Over Certificate will be issued upon successful completion of the Tests on Completion, trial run, and commissioning,

Operation and Maintenance of the Works shall be carried out for the Operation and Maintenance Period as specified in the Appendix to Tender."

Sub-Clause 8.3 Programme

The Contractor shall submit a detailed time programme to the Employer's Representative within 28 days after receiving the Notice under Sub-Clause 8.1 [*Commencement Date*]. The Contractor shall also submit a revised programme whenever the previous programme is inconsistent with actual progress or with the Contractor's obligations. Each programme shall include:

(a) the order in which the Contractor intends to carry out the Works, including the anticipated timing of each stage of design, Contractor's Documents, procurement, manufacture, inspection, delivery to Site, construction, erection, testing, commissioning and trial operation;

(b) the period of Operation Service;

(c) the periods for reviews under Sub-Clause 5.2 [*Contractor's Documents*] and for any other submissions, including the supply of samples in accordance with Sub-Clause 7.2 [*Samples*], approvals and consents specified in the Employer's Requirements;

(d) the sequence and timing of inspections and tests specified in the Contract, and (e) a supporting report which includes:

(i) a general description of the methods which the Contractor intends to adopt for both the Design-Build and the Operation Service;

(ii) details showing the Contractor's reasonable estimate of the number of each class of Contractor's Personnel and of each type of Contractor's Equipment, required on the Site for each major stage; and

(iii) the Contractor's proposed manning schedule for the Operation Service.

Unless the Employer's Representative, within 21 days after receiving a programme, gives Notice to the Contractor stating the extent to which it does not comply with the Contract, the Contractor shall proceed in accordance with the programme, subject to his other obligations under the Contract. The Employer's Personnel shall be entitled to rely upon the programme when planning their activities.

If, at any time, the Employer's Representative gives Notice to the Contractor that a programme fails (to the extent stated) to comply with the Contract or to be consistent with actual progress and the Contractor's stated intentions, the Contractor shall submit, within 14 days, a revised programme to the Employer's Representative in accordance with this Sub-Clause

Notwithstanding anything to the contrary in the above paragraphs of this Sub-Clause 8.3 or elsewhere in the Bid Documents, the Contractor shall be fully responsible for ensuring that the Works are fully completed within the Time for Completion of Works specified in the Appendix to Tender and in conformity with the Volume II Work requirement and technical specification. The Contractor shall submit, within 14 days of signing the Contract Agreement, the proposed Construction Program for approval by the Employer’s Representative. Such Construction Program shall be developed using a normally available commercial project management software (such as Primavera, MS Project, or equivalent) and shall show detailed micro-level activities together with Gantt charts,

CPM diagrams, critical paths, daily schedules, etc., as needed for systematic and professional management of all construction works. The Employer's Representative will either approve the submittal or provide comments thereon to the Contractor within 14 days of submission by the Contractor. The Employer's Representative's, approval, disapproval, comments, or failure to provide any of these to the Contractor, shall in no way relieve the Contractor of any of its obligations or responsibilities under the Contract.

In the event that the Contractor's actual progress falls behind the planned progress for reasons that are not outside the control of the Contractor, the Contractor shall accelerate his schedule to the extent required to ensure full completion of the Works within the Time for Completion of the Works, for which no additional payment will be made."

Sub-Clause 8.5 Delay Damages

Add the following after the first paragraph: If the Contractor fails to complete the Design-Build in accordance with the requirements of Sub-Clause 9.2 [*Time for Completion of Design-Build*], he shall pay delay damages as detailed in Sub-Clause 9.6 [*Delay Damages relating to Design-Build*].

Delay damages will be linked to the Project Schedule and Milestone prepared by Contractor and mutually agreed by both parties, Client & Contractor" If the Contractor fails to provide Operation and Maintenance for the entire O&M Period specified in the Contract, and such failure:

(a) is due to a cause for which the Contractor is responsible, and

(b) results in the Employer losing revenue or income which the Employer normally would have expected to receive during the Operation and Maintenance Period, or

(c) results in the Employer suffering any other loss which he would not have suffered but for such failure, or

(d) results in inadequate treatment service and/or inadequate performance

then the Contractor shall pay to the Employer compensation in accordance with Sub-Clause 22.5 [*Delays and Interruptions during the Operation and Maintenance*]."

If the Contractor fails or is unable to provide the Operation Service for the complete period specified in the Contract, or parts of the Operation Service, and such failure is:

(a) due to a cause for which the Contractor is responsible; and

(b) results in the Employer losing revenue or income which the Employer would normally have expected to receive during the Operation Service Period; or

(c) results in the Employer suffering any other loss which he would not have suffered but for such failure,

then the Contractor shall pay to the Employer compensation in accordance with Sub-Clause 10.6 [*Delays and Interruptions during the Operation Service*].

CLAUSE 9 DESIGN-BUILD

Sub-Clause 9.5 Rate of Progress

If, in the opinion of the Employer's Representative, at any time during the Design-Build Period:

(a) actual progress is too slow to complete within the Time for Completion of Design-Build; and/or
(b) progress has fallen (or will fall) behind the current programme under Sub-Clause 8.3 [*Programme*],

other than as a result of a cause listed in Sub-Clause 9.3 [*Extension of Time for Completion of Design-Build*], then the Employer's Representative may instruct the Contractor to submit, under Sub-Clause 8.3 [*Programme*], a revised programme and supporting report describing the revised methods which the Contractor proposes to adopt in order to expedite progress and complete within the Time for Completion of Design-Build.

Unless the Employer's Representative notifies otherwise, the Contractor shall adopt these revised methods, which may require increases in the working hours and/or in the numbers of Contractor's Personnel and/or Goods, at the risk and cost of the Contractor. If these revised methods cause the Employer to incur additional costs, the Contractor shall, subject to Sub-Clause 20.2 [*Employer's Claims*], pay these costs to the Employer, in addition to delay damages (if any) under Sub-Clause 9.6 [*Delay Damages relating to Design-Build*] below.

The Contractor shall endeavor to advise the Employer in advance of any known or probable future events or circumstances which might adversely affect progress. The Employer may require the Contractor to submit an estimate of the anticipated effect of the future events or circumstances, and/or a proposal under Sub-Clause 13.3 [*Variation Procedure*].

CLAUSE 11 TESTS

Sub-Clause11.4 Failure to Pass Tests on Completion of Design-Build

In the event that the Works fail to pass any or all of the Tests on Completion as defined in Volume II, the Employer will levy Damages, based on the extent or magnitude of such failure, in accordance with the formulation provided in the Appendix to Tender.

If the following conditions apply:

(a) the Works, or a Section, fail to pass any or all of the Tests on Completion,

(b) the relevant sum payable as damages for such failure is stated (or its method of calculation is defined) in the Appendix to Tender, and
(c) the Contractor pays such relevant damages to the Employer

then the Works or such Section shall be deemed to have passed such Tests on Completion.

However, the total amount of Delay Damages for Works and Damages for failure to pass the Tests on Completion as defined in this Sub-Clause shall not exceed the maximum amount of 'Delay Damages for Works' stated in the Appendix to Tender."

The damages will be accessed by Independent Engineer/PMC on actual.

Sub Clause 11.7 Commissioning Certificate

Performance of the Contractor's Design-Build obligations, including care of the Works, shall not be considered to have been completed until the Commissioning Certificate has been signed by the Employer's Representative and delivered to the Contractor, stating the date on which the Contractor, in the opinion of the Employer's Representative, completed all such obligations in accordance with the Contract (subject to the outstanding works and defects listed in accordance with Sub-Clause 11.5 [*Completion of the Works and Sections*]).

The Employer's Representative shall issue the Commissioning Certificate to the Contractor within 28 days after the application by the Contractor for the Commissioning Certificate subject to the provisions of Sub-Clause 11.5 [*Completion of the Works and Sections*].
Only the Taking Over Certificate shall be deemed to constitute acceptance of the Works.

CLAUSE 12 DEFECTS

Sub-Clause 12.1 Completion of Outstanding Work and Remedying Defects

The requirements regarding the completion of outstanding work and the remedying of defects are as follows:

(a) Design-Build Period: In order that the Works and Contractor's Documents, and each Section, shall be in the condition required by the Contract, the Contractor shall:

(i) complete any work which is outstanding on the date stated in the Commissioning Certificate as soon as practicable after such date, and not later than one year after such date; and

(ii) execute all work required to remedy defects or damage, as may be notified by (or on behalf of) the Employer.

Final payment for the Design-Build Period, in accordance with Clause 14 [*Contract Price and Payment*], will not be certified until the above requirements have, in the opinion of the Employer's Representative, been met.

If a defect appears or damage occurs, the Contractor shall be notified accordingly, by (or on behalf of) the Employer.

(b) Operation Service Period: The Contractor shall be responsible for repairing and making good any damage or defect occurring during the Operation Service Period, whether such defect or damage is notified by the Employer or his Representative, or observed by the Contractor himself.

The Contract Completion Certificate issued under Sub-Clause 8.6 [*Contract Completion certificate*] will not be issued until all defects and damage and all outstanding work, including all such items identified during the joint inspection made in accordance with Sub-Clause 11.8 [*Joint Inspection Prior to Contract Completion*], have been completed.

During the Operation and Maintenance Period the Contractor shall be responsible for repairing and making good any damage or defect occurring during the Operation and Maintenance Period, whether such defect or damage is identified by the Employer's Representative / Employer or observed by the Contractor himself.

The Final Contract Completion Certificate on Completion of the Operation and Maintenance Contract described under Sub-Clause 8.6 will not be issued until all defects and damage have been remedied and all outstanding work, including all such items identified during the joint inspection made in accordance with Sub-Clause 11.8 [*Joint Inspection Prior to Contract Completion*] have been completed.

Sub-Clause 12.2 Cost of Remedying Defects

All work required to repair defects or damage shall be executed at the risk and cost of the Contractor, except:

(a) where it is attributable to any act by the Employer or the Employer's Personnel or agents; or

(b)where it is as a result of an event that is covered under Clause 18[*Exceptional Risks*]

(c) Improper Operation and Maintenance attributable to the Contractor.

Where the Contractor is required to remedy a defect or damage to the Works under sub-paragraphs (a) or (b) of this Sub-Clause, the Contractor shall notify the Employer's

Representative and shall be entitled to a Variation under Clause 13 [*Variations and Adjustments*].

Sub-Clause 12.7 Completion of Operations and Maintenance Services

In order that the Works shall be in the condition required by the Contract at the end of the Operation and Maintenance Period and can be handed over to the Employer in good operating condition (fair wear and tear excepted), the Contractor shall:

(a) ensure that all components of the Works are fully functional and in good operating condition, suitable for the purposes for which they are intended;

(b) ensure that all defects or damages which may have arisen from the design, workmanship, materials, or Operation and Maintenance, have been identified and remedied;

(c) provide replacements for all spare parts that were used/consumed during the Operations and Maintenance Period; all such replacements shall be new and manufacturer's original equipment only; and

(d) execute all required work of amendment, reconstruction, repair, and remedying of defects and damage per instructions of the Employer or Employer's Representative.

All such work shall be executed by the Contractor at his own cost before handing over the Works. In the event that the Contractor fails to carry out the necessary remedial works, the Employer's Representative shall notify the Contractor, and proceed in accordance with the provisions of. Any costs incurred by the Employer in so doing shall be recoverable from the Contractor and will become a debt due and payable by the Contractor to the Employer and the Employer may, at his sole discretion, recover such amount by invoking the Contractor's bank guarantee or by any amount due to contractor.

The Contract shall not be considered to be completed until the Final Contract Completion Certificate has been signed by the Employer's Representative and delivered to the Contractor, stating the date upon which the Contractor has completed his operation and maintenance obligations to the satisfaction of the Employer's Representative. The Final Contract Completion Certificate shall be given by the Employer's Representative within 28 days after the end of the Operation and Maintenance Period, or as soon after such date as the Contractor has completed his obligations.

Only the Final Contract Completion Certificate shall be deemed to constitute final certification that the Contractor has satisfactorily fulfilled all of his obligations under the Contract."

CLAUSE 13 VARIATIONS AND ADJUSTMENTS

Sub-Clause 13.8 Adjustment for Changes in Cost

13.8.1 The amount payable to the Contractor and valued at base prices in accordance with the payment Schedule shall be adjusted for rises or falls in the cost of Labor, Equipment, Plant, Materials and other inputs to the Works, by the addition or deduction of the amounts determined by the formulae prescribed in this Sub-Clause. To the extent that full compensation for any rise or fall in costs to the Contractor is not covered by the provisions of this or any other clause in the Contract, the Contract Price shall be determined to include amounts to cover the contingency of such other rise or fall in costs.

13.8.2 **Adjustment Formula**: The amount to be added to or deducted from the Interim Payment Certificates for changes in cost and legislation shall be determined from formulae for each of the currencies in which the Contract Price is payable and for each of the sections of work priced in the said Schedule. The formulae will be of the following general type:

$$Pn = a + b\frac{Ln}{Lo} + c\frac{Mn}{Mo} + d\frac{En}{Eo} + etc$$

Where:

"**Pn**" is the adjustment factor to be applied to the estimated value of the work carried out in month "n";

"**a**" is a fixed coefficient, specified in the Appendix to Tender, representing the non-adjustment portion in contractual payments;

"**b**", "**c**", "**d**", etc., are coefficients representing the estimated proportion of each cost element (labor (L), materials (M), equipment operation (E), etc.) in the works, as specified in the Appendix to Tender;

"**Ln**", "**Mn**", "**En**", etc., are the current cost indices or reference prices for month "n", determined in the relevant currency of payment, applicable to each cost element on the date forty nine (49) days prior to the last day of the period to which the Special Interim Payment Certificate is related;

"**Lo**", "**Mo**", "**Eo**", etc., are the base cost indices or reference prices corresponding to the above cost elements, in the relevant currency of payment, on the Base Date as defined in the Volume I

The source of indices shall be those listed in the Appendix to Tender

13.8.3 **Base, Current and Provisional Indices:** The cost indices or reference prices specified in the Appendix to Tender, as approved by the Employer's Representative, shall be used. In cases where the Currency of Index is not the relevant currency of payment, the index shall be converted into the relevant currency of payment at the selling rate established by the Reserve Bank of India. If at any time a current index (for the date forty nine (49) days prior to the last date of the period to which the

Special Interim Payment Certificate is related) is unavailable, a provisional index as determined by the Employer's Representative shall be used, subject to subsequent correction of the amounts certified when the current index is available.

13.8.4 **Weighting and Adjustment Factors:** The weightings (coefficients) for each of the factors of cost, unless otherwise provided by the Employer in the Bidding Document, shall be proposed by the Contractor, subject to approval by the Employer's Representative. The weightings shall be adjusted if, in the opinion of the Employer's Representative, the weightings are rendered unreasonable, unbalanced, or inapplicable as the result of changes in the methods of work, or as a result of varied or additional work already executed or ordered or for any other reason. The decision of the Employer's Representative shall be final and binding to the Contractor.

13.8.5 **Adjustable Amount**: The adjustable amount of each Interim Payment Certificate shall be the difference between (i) the amount which, in the opinion of the Employer's Representative, shall be due to the Contractor pursuant to Sub-Clause 13.7 including the amount at base rates and prices of the scheduled work carried out but excluding provisional sums and the value of materials on site, and (ii) the amount as calculated in (i) above and included in the last preceding Interim Payment Certificate issued by the Employer's Representative. The adjustable amount shall exclude payments to nominated Sub-Contractors and any other amounts based upon actual cost or current prices.

13.8.6 **Adjusted Amount**: The adjusted amount of each Interim Payment Certificate shall be determined by applying the Price Adjustment Factor to the adjustable amount, and shall become payable to the Contractor in accordance with the provisions of Clause 13.7, subject to any deductions there from for retention money, delay damages, and any other monies due to the Employer from the Contractor including the recovery of the mobilization advance, if any.

13.8.7 **Adjustment due to Shortfall in Progress**: In the event the Contractor fails to attain the rate of progress, as per the approved program and schedule of progress, in the first or another quarter of the construction period and the shortfall in progress is covered up by him during subsequent quarters within the Intended Completion Period then the price adjustment of such work which was scheduled to be done in the previous quarter shall be notionally given based upon the price index of that quarter in which such work was required to be done.

13.8.8 **Failure to Complete Within the Time for Completion**: If the Contractor fails to complete the whole of the Works within the Time for Completion, adjustment of prices thereafter until the date of completion of the Works shall be made using either each index or price applicable on the date forty nine (49) days prior to the expiry of the Time for Completion, or the current index or price, whichever is more favourable to the Employer; provided that, if an extension of time is granted in accordance with Sub-Clause 8.3, the above provision shall apply only to the adjustment made after the expiry of such extension of time.

13.8.9 **Dates for Application of Changes in Cost:**

Work which is carried out during First Year (365 days) of the Works Contract Period will be carried out at the base rates and prices in accordance with the payment Schedule, and will not be subject to any adjustment for rises or falls in the cost of labor, equipment, plant, materials or other inputs to the Works. Increases or decreases in the cost of such inputs shall be adjusted on a monthly basis thereafter for the remaining works.

Sub-Clause 13.9 Amendments to the Contract Conditions/Specifications

If the Employer determines that if, in exceptional circumstances, it would be in best interests of the Project to modify or amend some of the Contract Conditions/ Specifications, then such modifications or amendments may be made if mutually agreed by the Employer and the Contractor.

CLAUSE 14 CONTRACT PRICE AND PAYMENT

Sub-Clause 14.1 The Contract Price

(a) Payment for the Works shall be made on a lump sum under major work categories as follow:

(i) Design Documentation Works, Road Works, Civil works, installation, testing, commissioning of mechanical, electrical and instrumentation and control equipment required for the different components in accordance with the payment units as set out in the Schedule of Prices and/or as proposed by the Contractor and approved by the Employer's Representative;

(ii) Operation and maintenance of the constructed facilities after completion and acceptance of the Works.

Selection of any of the recommended spare parts will be solely at the Employer's option, and recommended spare parts shall be provided by the Contractor at no extra cost and contractor will not be paid for same

(b) The Contract Price shall be adjusted for changes in the cost of labor and materials in accordance with the provisions of Sub-Clause 13.8 [*Adjustment for Change in Cost*] of this Appendix 1, Special Conditions of Contract.

(c) The Contractor shall pay all the duties and taxes in consequence of his obligations under the Contract, and the Contract Price shall not be adjusted for such costs, except as stated in Sub-Clauses 13.7[*Adjustment for Change in Technology*] and 13.8.

(d) Any quantities which may be set out in the Schedule are only estimated quantities and are not to be taken as the actual and correct quantities of the Works to be

executed by the Contractor in fulfillment of his obligations under the Contract. The Contractor is responsible to assess the exact requirements and quantities for all items for the purpose of quoting his rates, and no variation in rates will be allowed on account of any variation in the estimated quantities.

(e) Any quantities, prices or rates of payment per unit quantity which may be set out in the Schedule are only to be used for the purposes stated in such Schedule.

Sub-Clause 14.2 Advance Payments

The Employer will, if requested by the Contractor, make mobilization advance payments to the Contractor to assist in defraying the initial expenses that will necessarily be incurred by the Contractor for mobilization and design. The Mobilization Advance will be given to the Contractor with Simple Interest of 10 % (Percent) per annum.

The Advance payment will be made in three installments. The First instalment shall be an amount equal to 2 % (two percent) of the contract price, the Second Instalment shall be equal to 3 % (three percent) of the contract price and the third instalment shall be equal to 5 % (five percent) of the contract price. Advance payment will be paid only after Contractor submitting unconditional and irrevocable Bank guarantee for an amount equivalent to 110 % (one Hundred and Ten percent) of such installment.

The Employer's Representative shall issue an Interim Payment Certificate for the first installment after (i) execution of the Form of Agreement by the parties hereto (ii) provision by the Contractor of the Performance Security in accordance with Sub-Clause 4.2. Such bank guarantee shall be issued by a Nationalized having branch at Guwahati and acceptable to the Employer.

After the first instalment of the advance payment has been utilized as per the approved programme, and to the satisfaction of the Employer's Representative, the Contractor may then apply for the second instalment The Employer will make payment of the Second instalment of the mobilization advance only after the Contractor has fulfilled the following conditions:

(a) Mobilized the Project Manager for the Contract.

(b) Established and staffed a functional design liaison office at Guwahati city.

After the Second installment of the advance payment has been utilized as per the approved programme, and to the satisfaction of the Employer's Representative, the Contractor may then apply for the Third installment.

The Employer will make payment of the Third instalment after the Contractor has successfully fulfilled the following conditions:

(a) Mobilized the survey and subsoil investigation crews to the Site and commenced the surveys and subsoil investigations.

(b) Submitted a list of proposed subcontractors and their respective agreements for approval by the Employer's Representative.

(c) Submitted the proposed “Submission and Anticipated Approval Program” for construction documents for approval by the Employer’s Representative.

(d) Submitted the proposed construction programme for approval by the Employer’s Representative.

(e) Submitted,for approval by the Employer’s Representative, mobilization/ deployment schedules for:

(i) Contractor’s key personnel required for managing, executing and supervising the Works,
(ii) Contractor’s Plant, Machinery and Equipment required for executing the Works; and
(iii) Procurement Schedule for major materials and equipment to be incorporated into the Permanent Works.

(f) Submitted a Cash Flow Forecast for approval by the Employer’s Representative.

(g) Submitted a list of proposed quarries, suppliers and manufacturers, along with their credentials, for approval by the Employer’s Representative.

(h) Submitted details of funds mobilized by himself as per the Cash Flow Forecasts.

(i) Actual deployment of: (i) such Personnel, (ii) Machinery and Equipment, and (iii) placing of orders for major materials and equipment to be incorporated into the Permanent Works, as per the approved deployment schedules.

(j) Established the fully furnished Site office.

(k) Placed confirmed orders for supply of major items of material and equipment which is to be incorporated into the Permanent Works as per the approved procurement schedule.

(l) Procured initial quantities of pipes, cement, steel, shuttering materials, etc., required for executing the civil works in accordance with the approved schedule.

(m) Established and staffed, with qualified personnel a completely equipped testing laboratory at site for quality control purpose.

(n) Commenced construction work at the Site in accordance with the approved construction program.

The advance payments shall be used by the Contractor exclusively for mobilization expenses,as per the programme approved by the Employer’s Representative. It is expected that the Contractor will also mobilize sufficient funds, which should normally be not less that the advance provided by the Employer, so that adequate cash flow is maintained at all times during execution. The Contractor is required to maintain liquidity from its own sources, and the advance from the Employer is only intended to facilitate the Contractor’s mobilization and enhance activities on Site.In case the advance payment is not utilized by the Contractor as per the approved programme and within the stipulated

period to the satisfaction of the Employer's Representative, default proceedings as per Clause 15 [*Termination by Employer*] of General Conditions, shall be initiated against the Contractor. In case any action is initiated against the Contractor under clause 15 (Termination by Employer), then the bank Guarantee with the Employer shall be encashed, without any prejudice to the provision of Contract

Bank Guarantee shall remain effective until the Advance payment have been repaid.

Each Instalment of advance payment shall be repaid by contractor to the Employer no later than 365 (three hundred and sixty five days) from the respective date of Advance payment. In the event of the Contractor failure to make the repayment on time, the Employer will encash the Bank Guarantee for the advance payment. For the delay in repayment of the Advance payment, the contractor shall pay the interest to the Employer for each day of delay, such interest to be calculated at the rate of 18 % (Eighteen Percent) per annum.

If the Advance Payment has not been fully repaid prior to Termination under Clause 15 , as the Case may be, the whole of the balance then outstanding shall immediately become due and payable by the Contractor to the Client. In the event of Termination for Contractor Default, the Advance Payment shall be deemed to carry interest at the rate of 10% (ten per cent) per annum from the date of Advance Payment to the date of recovery by encashment of the Bank Guarantee for the Advance Payment. For the avoidance of doubt, the aforesaid interest shall be payable on each installment of the Advance Payment, regardless of whether the installment or any part thereof has been repaid to the Authority prior to Termination.

Sub-Clause 14.3 Application for Interim Payment Certificate

14.3.1: **Interim Payment Certificate for Works**

The Contractor shall submit a statement in six copies to the Employer's Representative after the end of each month in a form approved by the Employer's Representative, showing the amounts to which the Contractor considers himself to be entitled together with supporting documents which shall include the detailed report of progress during the month in accordance with Sub-Clause 4.21 [*Progress Reports*]. *In case of supplied plant and equipment, inspection and testing clearance certificates shall also be enclosed as support documents***.** The statement shall include the following items, as applicable, which shall be expressed in the various currencies in which the Contract Price is payable, in the sequence listed:

(a) the estimated contract value, at base rates and prices, of the Construction Documents produced and the Works executed up to the end of the month.

(b) any amounts to be added and deducted for changes in legislation and Adjustments in cost in accordance with Sub-Clauses 13.6[*Adjustments for Changes in Legislation*] and 13.8 [*Adjustments for Changes in Cost*];

(c) any amount to be deducted for retention, calculated by applying the percentage of retention stated in the Appendix to Tender to the total of the above amounts, until the

amount so retained by the Employer reaches the limit of Retention Money (if any) stated in the Appendix to Tender;

(d) any amounts to be added and deducted for the advance payments and repayments in accordance with Sub-Clause 14.2 [*Advance Payment*];

(e) any amounts to be added or deducted for Plant and Materials in accordance with Sub-Clause 14.6 [Payment for *Plants and Materials Intended for the Works*];

(f) any other additions or deductions which may have become due in accordance with the Contract (including those under Clause 20 –Claims, Disputes and Arbitration), other than under Sub-Clause 8.5 [*Delay Damages*]; and

(g) the deduction of the amounts certified in all previous Interim Payment Certificates.

14.3.2: Interim Payment Certificates for Operation and Maintenance

The Contractor shall submit a statement in six copies to the Employer's Representative after the end of each month, in a form approved by the Employer's Representative, showing the amounts to which the Contractor considers himself to be entitled together with supporting documents. The Statement shall include the following items as applicable:

(a) the estimated contract value of the operation and maintenance services of the facilities up to the end of the month;

(b) any amount to be added or deducted for changes in legislation and cost in accordance with Sub clause 13.6 and 13.8;

(c) any other additions or deductions which may have become due in accordance with the Contract (including those under Clause 20–Claims, Disputes and Arbitration), other than under Sub-Clause 8.5 [*Delay Damages*]; and

(d) the deduction of the amounts certified in all previous Interim Payment Certificates."

Change the heading of Sub-Clause 14.4, Schedule of Payments, to read as Sub-Clause 14.4, Interim Valuation

, 14.4.1 Payment for the works shall be made in accordance with Payment Schedule approved by Employer. The Contractor shall submit the measurements of Executed works in measurable units as per standard procedure of measurement books. Increase or decrease in physical quantity of lump sum item for which rate has been quoted will not be considered for change in rate and the rate will remain fix for any variation in such quantities.

14.4.2 The Contractor shall submit the Payment Schedule for the approval of the Employer. Payment Schedule will be linked with project schedule and milestone prepared by Contractor and mutually agreed by both parties, Employer & Contractor

Sub-Clause 14.6 Payment for Plant and Materials Intended for Works

Interim Payment Certificates shall include, under subparagraph (e) of Sub-Clause 14.3 [*Application for Advance and Interim Payment Certificates*], (i) an amount for Plant and Materials which have been sent to the Site for incorporation in the Permanent Works, and (ii) a reduction when the contract value of such Plant and Materials is included as part of the Permanent Works under subparagraph (a) of Sub-Clause 14.3.

If the lists referred to in sub-paragraphs (a) or (b) below are not included in the Contract Data, this Sub-Clause shall not apply.

The Employer's Representative shall determine and certify each addition if the following conditions are satisfied:

(a) the Contractor has:

(i) kept satisfactory records (including the orders, receipts, costs and use of Plant and Materials) which are available for inspection; and

(ii) submitted a statement of the cost of acquiring and delivering the Plant and Materials to the Site, supported by satisfactory evidence; and either:

b) the relevant Plant and Materials:

(i) are considered to be in accordance with the Contract, have passed any required pre-delivery inspections and tests, and have successfully passed any required third party inspections and are those listed in the Appendix to Tender for payment when delivered to site; and

(ii) have been delivered to the Site in accordance with the approved programme and delivery schedule, have passed any required inspections and/or tests on delivery, and are properly stored on the Site and protected against loss, damage or deterioration and appear to be in accordance with the Contract."

The additional amount to be certified shall be equivalent to Seventy Five (75 %) of the amount claimed by the contractor for such plants and materials delivered to site, after review of the documents mentioned in this Sub clause, taking account of the contract value of Such Plants and Materials as determined and appropriate by the Employer's Representative. Payment will be done only after contractor submitting the bank guarantee of amount equal to such certified amount.

The currencies for this additional amount shall be the same as those in which payment will become due when the contract value is included under sub-paragraph (a) of Sub-Clause 14.3 [*Application for Advance and Interim Payment Certificates*]. At that time, the Interim Payment Certificate shall include the applicable reduction which shall be equivalent to, and in the same currencies and proportions as, this additional amount for the relevant Plant and Materials.

Plant & Material delivered to site should be as per Project Requirement & Project Schedule, and will be verified and certified by PMC.

Sub-Clause 14.7 Issue of Advance and Interim Payment Certificates

No amount will be certified or paid until the Employer has received and approved the Performance Security provided for in Sub-Clause 4.2 [*Performance Security*]. Upon receipt of the Contractor's application for the advance payment, the Employer's Representative shall, within 14 days of receiving the application, issue to the Employer an Interim Payment Certificate in respect of such payment, with a copy to the Contractor. Thereafter, in respect of interim payment applications the Employer's Representative shall, within 28 days after receiving a Statement and supporting documents, issue to the Employer an Interim Payment Certificate which shall state

the amount which the Employer's Representative fairly determines to be due, with supporting particulars, and shall include any amounts due to or from the Contractor in accordance with a decision by the DAB made under Sub-Clause 20.6 [*Obtaining Dispute Adjudication Board's Decision*].

However, prior to issuing the Commissioning Certificate, the Employer's Representative shall not be bound to issue an Interim Payment Certificate in an amount which would (after retention and other deductions) be less than the minimum amount of Interim Payment Certificates (if any) stated in the Contract Data.

An Interim Payment Certificate shall not be withheld for any other reason, although:

a) if anything supplied or work done by the Contractor is not in accordance with the Contract, the cost of rectification or replacement may be withheld until rectification or replacement has been completed; and/or

(b) if the Contractor was or is failing to perform any work or obligation in accordance with the Contract, and had been so notified by the Employer's Representative, the value of this work or obligation may be withheld until the work or obligation has been performed.

In continuation to the first paragraph of this Sub-Clause 14.7, the Contractor will be permitted to submit monthly claims for payment for work, subject to the claim having a minimum value as indicted in Appendix to Tender. The Employer’s Representative shall subsequently, within the time set forth in the first paragraph of this Sub-Clause, deliver to the Employer with a copy to the Contractor an Interim Payment Certificate for the balance amount which the Employer’s Representative considers to be due. All relevant deductions or adjustments, as set out in Sub-Clause 14.3.1, shall be applied to such Interim Payments, and any amounts that are to be deducted for advance repayments shall be adjusted on a pro-rata basis.

The Employer's Representative may in any Payment Certificate make any correction or modification that should properly be made to any previous Payment Certificate. An Interim Payment Certificate shall not be deemed to indicate the Employer's Representative's acceptance, approval, consent or satisfaction of the Works.

Sub-Clause 14.8 Payment

The Employer shall pay to the Contractor:

(a) the advance payment within 21 days after receiving the documents in accordance with Sub-Clause 4.2 [*Performance Security*] and Sub-Clause 14.2 [A*dvance Payment*] and the Payment Certificate for the advance payment issued in accordance with Sub-Clause 14.7 [*Issue of Advance and Interim Payment Certificates*];

(b) the amount certified in each Interim Payment Certificate after the Employer's Representative receives the corresponding Statement and supporting documents, including any amounts due in accordance with a decision by the DAB which have been included in the Interim Payment Certificate; and within 28 days after certification of Interim Payment certificate by Employers Representative

(c) the amounts certified in the Final Payment Certificate Design-Build and the Final Payment Certificate Operation Service after the Employer receives each such Final Payment Certificate, including any amounts due in accordance with a decision by the DAB which have been included in the Final Payment Certificate; and within 56 Day after certification of Interim Payment certificate by Employers Representative

Payment of the amount due in each currency shall be made into the bank account, nominated by the Contractor, in the payment country (for this currency) specified in the Contract.

Sub-Clause 14.9 Delayed Payments

Deleted

Sub Clause 14.10 Payment of Retention Money for Works

When the Commissioning Certificate has been issued, the first half of the Retention Money shall be certified by the Employer's Representative for payment to the Contractor. If a Section Commissioning Certificate is issued for a Section, the relevant percentage of the first half of the Retention Money shall be certified and paid to the Contractor. Such amount shall be included for payment in the next Interim Payment Certificate following the issue of the Commissioning Certificate.

The Contractor shall be entitled to include the second half of the Retention Money in the Final Statement Design-Build.

Sub-Clause 14.13 Application for Final Payment Certificate Operation Service

Within 28 days after the end of the Retention Period, the Contractor shall submit to the Employer's Representative one original and five copies of the Final Statement Design-Build with supporting documents showing:

(a) the value of all work done in respect of the Design-Build; and

(b) any further sums which the Contractor considers to be due to him under the Contract in respect of the Design-Build.

Together with the Final Statement Design-Build, the Contractor shall submit a written undertaking that the Statement is in full and final settlement of all matters under or in connection with the Contract relating to the Design-Build.

If the Employer's Representative disagrees with or cannot verify any part of the Final Statement Design-Build, the Employer's Representative and the Contractor shall attempt to agree such matters, and the Contractor shall re-submit his Final Statement based on the agreement with the Employer's Representative. The Employer's Representative shall then issue a Final Payment Certificate Design-Build under Sub-Clause 14.12 [*Issue of Final Payment Certificate Design- Build*] for the agreed amount. If the Parties cannot agree on such matters, or if the Contractor has failed to submit his application for payment within the said 28 days, the Employer's Representative shall issue an Interim Payment Certificate under Sub-Clause 14.7 [I*ssue of Advance and Interim Payment Certificates*] for the amount which he considers to be due to the Contractor. If the Contractor is dissatisfied with the amount certified, he may refer the matter to the DAB for a decision in accordance with Clause 20.6 [*Obtaining Dispute Adjudication Board's Decision*].

"Within 56 days of receiving the Final Contract Completion on Completion of the Operation and Maintenance, the Contractor shall submit to the Employer's Representative, six copies of the a draft Final Statement for Operation and Maintenance with supporting documents showing in detail in a form approved by the Employer's Representative:

(a) the value of all work done in Operation and Maintenance, and

(b) any further sums which the Contractor considers due to him under the Contract or otherwise in relation to the Operation and Maintenance.

If the Employer's Representative disagrees with or cannot verify any part of the draft final statement, the Contractor shall submit such further information as the Employer's Representative may reasonably require and shall make such changes in the draft as may be agreed between them. The Contractor shall then prepare and submit to the Employer's Representative the final statement on Operation and Maintenance as

agreed. This agreed statement on Operation and Maintenance is referred to in these Conditions as the "Final Statement on Operation and Maintenance".

However, if following discussions between the Employer's Representative and the Contractor and any changes to the draft final statement on Operation and Maintenance which are agreed, it becomes evident that a dispute exists, the Employer's Representative shall deliver to the Employer (with a copy to the Contractor) an Interim Payment Certificate for the agreed parts of the draft final statement on Operation and Maintenance. Thereafter, if the dispute is finally resolved under Sub-Clause 20.6 [*Obtaining Dispute Adjudication Board's Decision*] or Clause 20.7 [*Amicable Settlement*], the Contractor shall then prepare and submit to the Employer (with a copy to the Employer's Representative) a Final Statement."

Sub-Clause 14.17 Currencies of Payment

The Contract Price shall be paid in the currency or currencies named in the Appendix to Tender or as agreed by both the Parties.

(a) payment of the damages specified in the Contract Data shall be made in the currencies and proportions specified in the Contract Data;

(b) other payments to the Employer by the Contractor shall be made in the currency in which the sum was expended by the Employer, or in such currency as may be agreed by both Parties;

(c) if any amount payable by the Contractor to the Employer in a particular currency exceeds the sum payable by the Employer to the Contractor in that currency, the Employer may recover the balance of this amount from the sums otherwise payable to the Contractor in other currencies; and

(d) if no rates of exchange are stated in the Contract Data, they shall be those prevailing on the Base Date and determined by the central bank of the Country.

CLAUSE 17 RISK ALLOCATION

Sub-Clause 17.5 Contractor's Care of the Works

Unless the Contract is terminated in accordance with these Conditions, the Contractor shall take full responsibility for the care of the Works and Goods from the Commencement Date until the Commissioning Certificate for the whole of the Works is issued pursuant to Sub-Clause 11.7 [*Commissioning Certificate*]. If the Contract is terminated in accordance with these Conditions, the Contractor shall cease to be responsible for the care of the Works from the date of expiry of the Notice of termination.

The Contractor shall also be responsible for the care of the Permanent Works during the Operation Service Period in accordance with the requirements of the Operating License pursuant to Sub-Clause 1.7 [*Operating License*].

The Contractor shall also be responsible for the care of any part of the Permanent Works for which a Section Commissioning Certificate has been issued.

The Contractor shall also take full responsibility for any outstanding work which he shall have undertaken to complete during the Operation Service Period until all such outstanding work is completed.

The Contractor shall also be responsible for the care of the Facilities during the Operation and Maintenance Period in accordance with the requirement of the License Agreement Notwithstanding anything to the contrary stated in the Contract, the Contractor shall also be responsible for any part of the Works for which Taking-Over Certificate is issued.

The Contractor shall also take full responsibility for any outstanding work which he shall have undertaken to complete during the Operation and Maintenance Period until all such outstanding work is completed.

Subject to the provisions of Sub-Clause 17.8 [*Limitation of Liability*], the Contractor's Risks during the Operation and Maintenance Period are:

(a) all risks resulting or arising from the design or construction of the Works, or the Materials used therein, notwithstanding any testing carried out by or approved or witnessed by the Employer's Representative; and

(b) all risks resulting or arising from the operation and maintenance of the Facilities and the care of the Facilities excluding the Employer's Risks listed under Sub-Clause 17.3 [*Employer's Risks*].

Sub-Clause 17.12 Risk of Infringement of Intellectual and Industrial Property Rights

In this Sub-Clause, "infringement" means an infringement (or alleged infringement) of any patent, registered design, copyright, trademark, trade name, trade secret or other intellectual or industrial property right relating to the Works; and "claim" means a claim (or proceedings pursuing a claim) alleging an infringement.

The Employer shall indemnify and hold the Contractor harmless against and from any claim alleging an infringement which is or was:

(a) an unavoidable result of the Contractor's compliance with the Employer's Requirements; or
(b) a result of any Works being used by the Employer:
(i) for a purpose other than that indicated by, or reasonably to be inferred from, the Contract; or

(ii) in conjunction with anything not supplied by the Contractor, unless such use was disclosed to the Contractor prior to the Base Date or is stated in the Contract.

The Contractor shall indemnify and hold the Employer harmless against and from any other claim which arises out of or in relation to (i) the Contractor's design, manufacture, construction or execution of the Works, (ii) the use of Contractor's Equipment, or (iii) the proper use of the Works.

If a Party is entitled to be indemnified under this Sub-Clause, the indemnifying Party may (at its cost) conduct negotiations for the settlement of the claim, and any litigation or arbitration which may arise from it. The other Party shall, at the request and cost of the indemnifying Party, assist in contesting the claim. This other Party (and its Personnel) shall not make any admission which might be prejudicial to the indemnifying Party, unless the indemnifying Party failed to take over the conduct of any negotiations, litigation or arbitration upon being requested to do so by the other Party.

Sub-Clause 17.13 Occupation and Care of Employer's Facilities

The Contractor occupying the Employer's facilities temporarily for the purpose of the Contract shall take full responsibility, from the dates of use or occupation to the dates of handover or cessation of occupation, of the items which are described, if any, in Volume II Technical Specifications/ Works requirements. If any loss or damage happens to any of the occupied facilities while the Contractor is responsible for their care, arising from any cause whatsoever other than the Employer's Risks listed in Sub-Clause 17.3, the Contractor shall, at its own cost, rectify such loss or damage to the satisfaction of the Employer's Representative. All temporarily occupied facilities shall be handed over upon completion of the Works, or on such other date as is mutually agreed, in the same or better condition than when they were given into the Contractor's care, normal wear and tear is accepted."

The Contractor shall be liable for any loss or damage caused by any actions performed by the contractor after a Taking over certificate has been issued. The Contractor shall also be liable for any loss or damage which occurs after a Taking over certificate has been issued and which arose from a previous event for which the Contractor was liable.

CLAUSE 20 CLAIMS, DISPUTES AND ARBITRATION

Add the Following

Modify Clauses 20.3, 20.4, 20.5, 20.6, 20.7, 20.8 ,20.9, 20.10, 20.11 as follows a. No Dispute can be raised except before the Competent Authority as defined in contract data in writing giving full description and grounds of dispute. It is clarified that merely recording protest while accepting measurement and / or payment shall not be taken as raising a dispute.

b. No dispute can be raised 45 days of its first occurrence. Any dispute raised after expiry of 45 days of its first occurrence shall not be entertained and the Employer shall not be liable
for claims arising out of such dispute.

c. The Competent Authority(MD, GSCL) shall decided the matter within 45 days.

d. The contractor shall have to continue execution of the work with the due diligence not withstanding pendency of a dispute before any authority or forum.

Implementation of Clause 20.1 & 20.2 will be as per procedure as mentioned above.

Sub-Clause 20.1 Contractor's Claim

Add the following in the end of penultimate paragraph of this Sub clause:

"If the Employer's Representative does not respond within the time frame defined in this sub clause, either Party may consider that the claim is rejected by the Employer's Representative and either of the Parties may refer it to the DAB in accordance with Sub Clause 20.4."

Sub-Clause 20.8 Arbitration

Delete the first paragraph of this Sub Clause in entirety and replace it with the following:

Unless settled amicably, any dispute in respect of which the DAB's decision (if any) has not become final and binding shall be settled by arbitration under Indian Arbitration and Conciliation Act 1996 or any Statutory amendments thereof and the rules made there under and for the time being in force.

The number of arbitrators will be in accordance with the Indian Arbitration and Conciliation Act, 1996, or any statutory amendments thereof. The arbitral proceedings shall be conducted in English language. The Venue of Arbitration shall be Guwahati, India

ADD THE ADDITIONAL CLAUSE AND SUB CLAUSES

CLAUSE 21 TAXATION

Sub-Clause 21.1 Foreign Taxation

The prices bid by the Contractor shall include all taxes, duties and other charges imposed outside the Employer's country on the production, manufacture, sale and transport of the Contractor's Equipment, Plant, materials and supplies to be used on or furnished under the Contract and on the services performed under the Contract."

Sub-Clause 21.2 Local Taxation

(i) The price bid by the Contractor shall include all Goods and service tax (GST) and applicable duties/taxes, if any.. Nothing in the Contract shall relieve the Contractor from his responsibility to pay any tax that may be levied in India on profits made by him in respect of the Contract. The Contractor shall be deemed to be familiar with the tax laws of India.

Employer will provide all necessary support for admissible exemption, if any, for any kind of Tax or Duty.

Sub-Clause 21.3 Income Taxes on Staff

"The Contractor's staff and labor will be liable to pay personal income taxes in the Employer's country in respect of such of their salaries and wages as are chargeable under the laws and regulations 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 and regulations."

Any expatriate staff or staff not normally resident in India, employed by the Contractor shall pay personal income Tax on all money earned and paid in India.

Sub-Clause 21.4 Tax Deduction at Source (TDS)

Tax shall be deducted at the source from the payments made to the Contractor as per the Applicable Law / Statute

Sub-Clause 21.5 Changes in Laws and Regulations

If, after the date seven (7) 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.

Bidder to note that any subsequent changes in Tax structure by government will be compensated (Plus or Minus) on availability or submission of actual documentation. Contractor has to intimate Employer regarding changes occurred in Tax structure after bid submission. If the Contractor fails to provide such information and if any financial obligation may arise due to change in Tax structure, same will be recovered from Contractor. The Contractor shall apply fair means of Stock maintenance and shall adopt accounting standards as may be prescribed under

Goods and Service Tax-GST. For arriving at the difference in procurement prices, due to change in GST it will be open for Employer to ask for original invoices, LR, weigh bridge slips, payment details and such other documents as may be required for the purpose. If there is reduction in overall tax burden then proportional benefit of that shall be passed on to the Employer.

CLAUSE 22 OPERATION AND MAINTENANCE

Sub-Clause 22.1 General Requirements

The Contractor shall comply with the Operation Management System as provided for in the Contract and any revisions thereof which are agreed during the Contract Period. The Contractor shall follow the requirements of the Operation and Maintenance Plan and the Operation and Maintenance Manuals. No significant alteration to such arrangements and methods shall be made without the prior approval of the Employer's Representative.

The Plant Contractors and maintenance personnel shall have the appropriate experience and qualifications to perform the Operation and Maintenance service as required under the Contract. The names, with details of their qualifications and experience, of all operation and maintenance personnel shall be submitted to the Employer for approval, and no such personnel shall be engaged prior to receiving such approval.

Sub-Clause 22.2 Commencement of Operation and Maintenance

The Operation and Maintenance shall not commence until the Works have been completed in accordance with the Contract and Taking-Over Certificate has been issued in terms of the Contract.

Should the Works Contract Completion Certificate, or any notice attached or pertaining thereto, contain requirements or restrictions over and above those in the Contract, the Contractor shall comply with such requirements and/or restrictions.

The Contractor shall thereafter provide the Operation and Maintenance service in compliance with the Operation Management System and in accordance with As-Built Documents and the Operation and Maintenance Manuals.

If the Contractor wishes to modify a document which has previously been submitted and approved, the Contractor shall immediately notify the Employer's Representative, and shall subsequently submit revised document(s) to the Employer's Representative for review accompanied by a written explanation of the need for such modification.

The Contractor shall not implement any proposed modification until such modification has been reviewed by the Employer's Representative, and consent to proceed has been given in writing. However, any such approval or consent, or any review (under

this Sub-Clause or otherwise), shall not relieve the Contractor from any obligation or responsibility.

Sub-Clause 22.3 Delivery of Raw Materials

The Contractor shall be responsible for the supply and delivery to the Site (or other designated place) of the chemicals, fuels, consumables and other such items specified in the Employer's Requirements. The Contractor shall be responsible that all such items are fit for purpose and comply with the requirements of the Contract in respect of quality, purpose and function.

In the event that any such item or product is not delivered in accordance with the agreed delivery programme or deviates from the specified quality, and such delay or deviation causes the Contractor to suffer additional cost, the Contractor shall not be entitled for any extra costs which he has incurred.

Sub-Clause 22.4 Training

The Contractor shall carry out the training of Employer's Personnel in the Operation and Maintenance of the Facilities to the extent specified in the Employer's Requirements.

The programme and scheduling of the training shall be agreed with the Employer, and the Contractor shall provide experienced training staff, and all training materials as stated in the Employer's Requirements. The Employer shall be responsible for nominating and selecting suitable personnel for training.

Sub-Clause 22.5 Delays and Interruptions during Operation and Maintenance

Delays and interruptions during the Operation Service will be agreed and determined as follows:

(a) delays or interruptions caused by the Contractor

If there are any delays or interruptions during the Operation and Maintenance service which are caused by the Contractor or by a cause for which the Contractor is responsible, the Contractor shall compensate the Employer for any losses including loss of revenue, loss of profit, and overhead losses. The amount of compensation due shall be agreed according to Sub-Clause 3.5 [*Determinations*], and the Employer shall be entitled to recover the amount due by making a corresponding deduction from the next payment due to the Contractor. However, the total amount of compensation payable by the Contractor to the Employer shall not exceed the amount stated in the **Appendix to Tender.**

(b) suspension by the Employer

The Employer's Representative may at any time during the Operation and Maintenance instruct the Contractor to suspend progress of the Operation and Maintenance. During such suspension, the Contractor shall protect, store, secure and maintain the Facilities against any deterioration, loss or damage.

If the need to suspend the Operation and Maintenance by the Employer is due to any failure of the Contractor or circumstances for which the Contractor is responsible under the Contract, the provisions of paragraph (a) of this Sub-Clause shall apply.

If the need to suspend the Operation and Maintenance is not as a result of any failure by the Contractor or is due to circumstances for which the Contractor is not responsible under the Contract, the provisions of paragraph (b) of this Sub-Clause shall apply.

If a suspension which is not due to any failure by the Contractor or is due to circumstances for which the Contractor is not responsible under the Contract has continued for more than 84 days, the Contractor may request the Employer's Representative's permission to proceed. If the Employer's Representative does not give permission within 28 days after being requested to do so, the Contractor may give notice of termination under Sub-Clause 16.2 [*Termination by Contractor*].

After the permission or instruction to proceed is given, the Contractor and the Employer's Representative shall jointly examine the Facilities. The Contractor shall make good any deterioration or defect in the Plant and the Employer's Representative shall make a written record of all making good required to be carried out by the Contractor. If the suspension is not due to any failure by the Contractor or is due to circumstances for which the Contractor is not responsible under the Contract, the Contractor shall be entitled to be paid only after approval from the Employer the amount required for making good the Facilities prior to re-commencing the Operation and Maintenance

Sub-Clause 22.6 Failure to Maintain Compliance with Quality requirements

In the event that the Contractor fails to achieve and maintain compliance with the Specified quality requirements specified in the Contract, the Contractor and Employer shall jointly establish the cause of such failure.

(a) If the cause of the failure lies with the Contractor then, after due consultation with the Employer, the Contractor shall take all steps necessary to achieve and maintain compliance with the effluent quality requirements specified in the Contract.

If the Employer suffers any loss as a result of the failure or the measures taken by the Contractor, the Contractor, subject to Sub-Clause 3.5 [*Determinations*], shall pay the Employer performance damages as stipulated in Appendix to Tender**.**

Unless otherwise stated in the Contract, if the failure continues for a period of more than 15 days, and the Contractor is unable to achieve compliance with the specified quality requirements specified in the Contract, the Employer may:

(i) either continue with the Operation and Maintenance with the deduction in the Contractor's monthly payment as stated in Appendix to Tender or

(ii) give the Contractor 30 days' notice in writing and terminate the Contract. In such an event, the Employer shall be free to continue the Operation and Maintenance himself or by others.

Sub-Clause 22.7 Completion of Operation and Maintenance

Unless the Parties have mutually agreed to extend the Operation and Maintenance Period, the obligation of the Contractor to operate and maintain the Facilities under the Contract shall cease at the end of the period stated in the Contract as the Operation and Maintenance Period.

Notwithstanding the foregoing, other services required to be performed by the Contractor must be completed before the Contractor will be entitled to receive the Final Contract Completion Certificate on Completion of the Operation and Maintenance Period in accordance with Sub-Clause 10.6 of this Contract.

Pre-conditions which must be fulfilled by the Contractor before the Final Contract Completion Certificate on Completion of the Operation and Maintenance Period will be issued are:

(a) Inspection in accordance with Sub-Clause 11.8 [*Joint Inspection Prior to Contract Completion*],

(b) Testing in accordance with Sub-Clause 11.9 [*Procedure for Tests Prior to Completion*],

(c) Updating Operation and Maintenance manuals and providing performance records and data in accordance with Sub-Clause 5.6 [*Operation and Maintenance Manuals*], and

(d) Remedying defects found during inspection in accordance with Sub-Clause 11.8 [*Joint Inspection Prior to Contract Completion*].

Sub-Clause 22.8 Operating License

The Employer shall issue to the Contractor the Operating License or equivalent legal authorization to enable the Contractor to operate and maintain the Facilities during the Operation and Maintenance Period.

The Operating License shall automatically come into full force and effect upon issue of the Works Contract Completion Certificate upon completion of the execution of the Works in accordance with the Contract and issuance of the Taking-Over Certificate.

The Operating License 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 and Maintenance as set out in the Contract. The Operating License granted pursuant to this 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 / Facilities. The license will immediately terminate upon termination of this Contract for whatever reason.

CLAUSE 23 STATUTORY COMPLIANCE

The law of the place of the work shall govern the work of the Contract. The Contractors shall be responsible for all work & shall comply to the requirements of all applicable Central (Federal), State & Local Laws, Ordinances, guidelines, rules

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TERMS AND PROCEDURES OF PAYMENT

Terms of Payment

1.1 General

In accordance with the provisions of GC, the Employer shall pay the Contractor in the manner and at the times set out in this Terms and Procedures of Payment Appendix.

1.2 Payment during the Design-Build Period

In respect of the amount for Design-Build Services listed in Price Schedule of the Contractor's Bid (the "Design-Build Price") for all current portions, the Employer shall make the payments as per the Clause 14 of Contract Price

1.3 Payment during the Operation Period

In respect of the amount for Operations Services listed on the Price Schedule, for all currency portions, after the Operations Starting Date, the Employer shall pay the Contractor equal monthly payments, equal to the monthly amount set out in the Price Schedule for Operations Services (the "Monthly Operations Payment").

1.4 Currencies

Payments will be made by the Employer in the currencies and as quoted by the Contractor in the Price Schedule of the Contractor's Bid, unless otherwise agreed between the Parties.

PAYMENT PROCEDURES

The procedures to be followed in applying for certification and making payments shall be as follows:

(1) During the Design-Build Period, payment shall be dealt with in accordance with progress achieved for Design built services, and

(a) During the Operations Period, the Contractor shall deliver an invoice no later than 15 days after the end of the 30 day period to which the invoice applies. If the End Date falls on a date that makes the Contractor's last period of operation less than 30 days, the Contractor shall submit an invoice that pro-rates the Monthly Operations Payment based on the number of days that the Operations Services were provided in the final period of operations.