The Tata Power Company Ltd	TATA POWER	OPEN TENDER NOTIFICATION
Tender Reference: ***CC27AAM027***		*Document Date:* ***1st Oct 2026***

The Tata Power Company Limited Invites Tender through E-Tender Two-Part Bidding Process from interested bidders for the following package: -

A. Summary of the tendered package:

Sr. No.	Description	Tender Reference no.	Bid Guarantee Fee / EMD (Rs.)	Tender Fee (Rs.)	Last Date and Time for bid submission
For the following package please send mail to Ms. Ayesha Abbas Mujawar (ayesha.mujawar@tatapower.com) with copy to Mr. Rameshkumar P N (pnramesh@tatapower.com).					
1.	3 year OLA for RI work at Mumbai Distribution.	CC27AAM027	2,00,000/-	2,000 /-	21st Oct 2026

B. Procedure to Participate in Tender.

Following steps to be done before "Last date and time for Payment of Tender Participation Fee" as mentioned above

1. Non-Refundable Tender Fee, as indicated in table above, to be submitted in the form of

Direct deposit in the following bank account and submit the receipt along with a covering letter clearly indicating the Tender Reference number –

Beneficiary Name – The Tata Power Co. Ltd.

Bank Name – HDFC Bank Ltd.

Branch Name – Fort Branch, Mumbai

Address – Maneckji Wadia Building, Nanik Motwani Marg, Fort, Mumbai 400023.

Branch Code – 60

Bank & Branch Code – 400240015

Account No – 00600110000763

Account type – CC

IFSC Code – HDFC0000060

2. Eligible and Interested Bidders to submit duly signed and stamped letter on Bidder's letterhead indicating

Tender Enquiry number

Name of authorized person

Contact number

e-mail id

Details of submission of Tender Participation Fee

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E-mail with necessary attachment of 1 and 2 above to be send to ayesha.mujawar@tatapower.com with copy to pnramesh@tatapower.com before "Last date and time for Payment of Tender Participation Fee"

Interested bidders to submit Tender Participation Fee and Authorization Letter before Last date and time as indicated above after which link from Tata Power E-Tender system (Ariba) will be shared for further communication and bid submission.

Please note all future correspondence regarding the tender, bid submission, bid submission date extension, Pre-bid query etc. will happen only through Tata Power E-Tender system (Ariba).

No e-mail or verbal correspondence will be responded. All communication will be done strictly with the bidder who have done the above step to participate in the Tender.

Also it may be strictly noted that once date of "Last date and time for Payment of Tender Participation Fee" is lapsed no Bidder will be sent link from Tata Power E-Tender System (Ariba). Without this link vendor will not be able to participate in the tender. Any last moment request to participate in tender will not be entertained.

Any payment of Tender Participation Fee by Bidder who have not done the pre-requisite will not be refunded.

Also all future corrigendum's to the said tender will be informed on Tender section on website https://www.tatapower.com only.

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OPEN TENDER NOTIFICATION

FOR

CC27AAM027-3 year OLA for RI work at Mumbai Distribution.

The Tata Power Company Limited (Tata Power)

Smart Center of Procurement Excellence,2nd Floor,
Sahar Receiving Station, Near Hotel Leela,
Sahar Airport Road, Andheri East, Mumbai-400059

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Section A : Tender Notice including Instruction to Bidders

1. Tender Details

1.1 Key Tender Specific Details

Reference Number	**CC27AAM027**
Description	**3 year OLA for RI work at Mumbai Distribution.**
Type of Tender	**Outline Agreement**
Estimated Period	**3 years**
Tender Fee	**Rs 2000/-**
Earnest Money Deposit (EMD)	**Rs. 2,00,000** **Rs. Two Lakh only**
Price Basis	**Fixed Price with Year on Year escalation**
Executive Handling this Tender*	Name: Ms. Ayesha Abbas Mujawar E-Mail ID: ayesha.mujawar@tatapower.com
Technical Query *	Name: Mr. Rohit Gowda E-mail id- rohit.gowda1@tatapower.com

*You may contact the above personnel from Monday to Friday during office hours only.

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1.2 Calendar of Events

(a)	Payment of Tender Fee and Submission of letter nominating authorized person by Interested Bidder indicating their intent to Buy Tender	Till 7th Oct 2026
(b)	Access to Tender Documents through E-Tender system to authorized person of Interested Bidder	7th Oct 2026
(c)	Last Date of receipt of pre-bid queries, if any.	12th Oct 2026
(d)	Last Date of Posting Consolidated replies to all the pre-bid queries as received	15th Oct 2026
(e)	Last date and time of receipt of Bids	21st Oct 2026

Note:- * These date and time are as planned and tentative. In case of change the same shall be intimated to Authorized Person of Interested Bidder through E-Tender System.

Please note post submission of Bids relevant communication will be done with Authorized Person of Interested Bidder through E-Tender System

1.3 Mandatory documents required along with the Bid

1.3.1 Bid Guarantee Fee (EMD) of requisite value and validity. PLEASE NOTE THAT BID GUARANTEE ONLY IN FORM OF BANK GUARANTEE WILL BE ACCEPTED.

1.3.2 Requisite Documents to ascertain fulfilling of Technical and Commercial Pre-Qualification Requirement as detailed in Tender Enquiry.

1.3.3 Technical Submission including Drawings, Type Test details etc as detailed in Technical Specification.

1.3.4 Required Commercial Submission as detailed in Tender Document

1.3.5 Technical and Commercial Clarification and Deviations as per the format attached in the Tender Enquiry

1.3.6 Proper authorization letter to sign the tender and participate in Tata Power E-Tender system on the behalf of bidder.

1.3.7 **For vendor not registered with Tata Power, Duly filled Vendor Registration form with all supporting documents is mandatory to participate in the Tender**.

Please note that in absence of any of the above documents, the bid submitted by a bidder shall be liable for rejection.

Also please note that whenever editable format are shared it is requested that data be filled in relevant cells. No formatting or addition / deletion of rows / columns to be done. Wherever editable Excel submission are requested the file should be free from references, macros etc.

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Checklist of Document Submission

Stage of Tendering	Document	Type of Format	Mode of submission
Before last date of Pre-Bid Query	Query / Clarification / Deviation (QCD) Format. (F1) Technical and Commercial	Editable Excel Format	Through message in E-tender system
Bid Submission Envelope 1 (First Part)	**Earnest Money Deposit**	**Original Bank Guarantee**	**In Sealed Envelope**
Bid Submission Envelope 2 (Second Part)	**Documents to be uploaded in Ariba only.** In case of multiple files, a zipped folder can be attached for the same (size limit of 100MB per zipped file)		
To be submitted Under Tab 2.1 in Ariba	Duly filled PQR and supporting documents		
	Duly filled PQR format	Editable Excel Format	E-Tender System
	Backup documents for Technical and Commercial PQR	Signed and Scanned documents	E-Tender System
To be submitted under Tab 2.2 in Ariba	Technical Submission and Supporting Documents		
	Duly filled Unpriced Bid Format. Signed copy of Technical Specifications indicating your acceptance of the same	Signed and scanned copy of document	E-Tender System
To be submitted under Tab 2.3 in Ariba	Commercial Submission and supporting document		

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	Letter of Undertaking (FOR VENDORS NOT REGISTERED WITH TATA POWER)	Scanned Copy of letter of undertaking duly filled, stamped and signed	E-Tender System
	E-auction Undertaking form	Scanned Copy of letter of undertaking duly filled, stamped and signed	E-Tender System
Bid Submission Envelope 3 (Third Part)	**Duly filled Priced Bid Format**	Hard copy in original duly signed and stamped	**Sealed Envelope**
	Duly filled Priced Bid Format	To be entered in E-Tender System	E-Tender System

1.4 Deviation from Tender

Normally, the deviations to tender terms are not admissible and the bids with deviation are liable for rejection. Hence, the bidders are advised to refrain from taking any deviations on this Tender. Still in case of any deviations, all such deviations shall be set out by the Bidders, clause by clause in the Query / Clarification / Deviation (QCD) Format. Deviations have to be mandatorily submitted in editable Excel sheet.

Technical or Commercial Deviation should be mentioned in Deviation Format only. Deviation in any other document or Format will not be considered.

1.5 Right of Acceptance/Rejection

1.5.1 Bids are liable for rejection in absence of following:-
1.5.2 Mandatory Documents as listed in 1.3 above
1.5.3 Price Bid as per the Price Schedule mentioned in Tender Document
1.5.4 Receipt of Bid and Response to queries within the due date and time
Tata Power reserves the right to accept/reject any or all the bids without assigning any reason thereof.

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1.6 Qualification Criteria

Sr no	Parameter	Tata Power Requirement	Documents To be submitted by Bidder to ascertain meeting of Pre-qualification requirement
1	Bidder's Technical Capability to handle jobs detailed in the Tender	Bidder must have experience of successfully completing similar RI civil works during the past 3 years as on the date of bid opening, with minimum experience in the following works: • Cable Trench Works – minimum 100 Rmt • PCC Works – minimum 500 Cum • Asphalt/Bituminous Road Works – minimum 2,000 Sqm • RCC Works, including foundations, drains, trench structures and allied works – minimum 100 Cum The above experience shall be supported by relevant Work Orders/Completion Certificates/Measurement Sheets or equivalent documentary evidence from the client.	Bidder to submit list of jobs and major order executed including Order Copiers, Customer Reference Documents
2	Experience	Bidder must have experience of successfully completing a minimum of the following RI civil works during the past 3 years as on the date of bid opening: Cable Trench Works – minimum 100 Rmt PCC Works, including PCC flooring, bedding and allied works – minimum 500 Cum Asphalt/Bituminous Road Works – minimum 2,000 Sqm RCC Works, including foundations, drains, slabs and allied works – minimum 100 Cum	Order copies with details of Customer for whom work is done
3	Performance	Bidder shall submit performance certificate for minimum one year from the utility/company where they have worked directly or indirectly. In case the bidder has a previous association with TPC-D for similar products and services, the performance feedback for that bidder by Tata Power User Group shall only be considered irrespective of performance certificates issued by any third organization	Performance certificates
4	Financial Capability	Average annual turnover of the Vendor for last three financial years shall not be less than **Rs. 20 Lakhs**,	Copy of audited Balance Sheet and P&L Account along with UDIN number to be submitted

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		specifically in civil works including civil, Fabrication, structural repairs.	in this regard.
5	Certification	Bidder should possess ISO-9001, ISO-14001 and OHSAS-18001 / ISO- 45001 Certification or they should provide an undertaking that they will obtain these certifications for their Organization if the work is awarded to them.	ISO certificates

1.7 Pre-Bid Queries

Technical or Commercial Pre-Bid Queries if any has to be sent through message in E-Tender System. Pre-Bid Query has to be sent only in the Query / Clarification / Deviation (QCD) Format. Pre-Bid Queries sent in any other format or send through any other communication channel will not be accepted and answered. Pre-Bid Query have to be sent in the stipulated timeline as defined in the Tender Document. No Pre-Bid Query will be accepted after the due time and date as specified as "Last Date of receipt of pre-bid queries, if any"

1.8 Marketing Integrity

We have a fair and competitive marketplace. The rules for bidders are outlined in the General Condition of Contracts and other parts of Tender Documents. Bidders must agree to these rules prior to participating. In addition to other remedies available, Tata Power reserves the right to exclude a bidder from participating in future markets due to the bidder's violation of any of the rules or obligations contained in the General Condition of Contracts or other part of the Tender Documents. A bidder who violates the market place rules or engages in behavior that disrupts the fair execution of the marketplace, may result in restriction of a bidder from further participation in the marketplace for a length of time, depending upon the seriousness of the violation. Examples of violations include, but are not limited to:

- Failure to honor prices submitted to the marketplace
- Breach of terms as published in TENDER
- Submit irrelevant documents or frequently cases of missing documents as part of compliance to Qualifying, Technical or Commercial Requirements causing unnecessary delay in Tender Evaluation

1.9 Supplier Confidentiality

All information contained in this tender is confidential and shall not be disclosed, published or advertised in any manner without written authorization from Tata Power. This includes all bidding information submitted to Tata Power. All tender documents remain the property of Tata Power and all suppliers are required to return these documents to Tata Power upon request. Suppliers who do not honor these confidentiality provisions will be excluded from participating in future bidding events.

1.10 Payment Terms

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100% payment shall be made within **60 days** (45 days for MSME) from the receipt and acceptance of the material at the Consignee Stores/Site/Location as per the Contractual Terms and Conditions.

2. Evaluation Criteria

- The bids will be evaluated technically on the compliance to tender terms and conditions.
- The bids will be evaluated commercially on the overall all-inclusive lowest cost for the complete tender BOQ / each line item as calculated in Schedule of Items. Tata Power however, reserves right to split the order line item wise and/or quantity wise among more than one Bidder. Hence all bidders are advised to quote their most competitive rates against each line item.
- Bidder has to mandatorily quote against each item of Schedule of Items. Failing to do so, Tata Power may reject the bids.

NOTE: In case of a new bidder not registered with Tata Power, factory inspection and evaluation shall be carried out to ascertain bidder's manufacturing capability and quality procedures. However Tata Power reserves the right to carry out factory inspection and evaluation for any bidder prior to technical qualification. In case a bidder is found as Disqualified in the factory evaluation, their bid shall not be evaluated any further and shall be summarily rejected. The decision of Tata Power shall be final and binding on the bidder in this regard.

2.1 Price Variation (PV) Clause:

Prices are fixed for one year and Year on Year escalation is applicable for next two years.

3.1 Bid Submission

Bidders are requested to submit their offer in line with this Tender document. Bids shall be submitted in 3 (three) parts:

FIRST PART: "EMD – BANK GUARANTEE" of Value detailed in 1.1 valid for 180 days from the due date of bid submission in the form of Bank Guarantee favoring 'The Tata Power Company Limited'. The EMD has to be strictly in the format as mentioned in Tender Document, failing which it shall not be accepted by Tata Power and the bid as submitted shall be liable for rejection.

Note : BG of 180 days and further claim period of 180 days is needed. In case the same cannot be issued by your bank then BG valid for 365 days can be provided.

Note : At times bidders have sought Tata Power bank details which is needed by them to make BG. Hence the same is reproduced below. These details are only provided to facilitate making of BG if needed:

Tata Power's Bank Details for submitting EMD BG:

Bank Name & Address – HDFC Bank, Maneckji Wadia Building, Nanik Motwani Marg, Fort, Mumbai 400 023.
A/c no. - 00600110000763
IFSC Code – HDFC0000060

The hard copy of EMD in a sealed envelope should be sent on address mentioned in Tender document.

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First Part has to be submitted in Sealed Envelope.

SECOND PART: "TECHNICAL / UN-PRICED COMMERCIAL BID" shall contain the following documents:

a) Documentary evidence in support of Technical, Commercial qualifying criteria
b) Technical literature/GTP/Type test report/Details of Qualified Manpower Available/ Testing Facility available etc. *(complete in all respect as desired and detailed in Technical Specification and Technical Requirement Section)*
c) Duly filled Technical and Commercial Deviation Sheets
d) Duly filled formats like Authorization affidavit form
e) *Unpriced Commercial Bid*

The technical / un-priced commercial bid shall be properly indexed and is to be submitted in Soft Copy though E-Tender system of Tata Power. Hard Copy of Technical Bids need not be submitted.

Second Part has to be submitted through E-Tender System Only

THIRD PART: "PRICE BID" shall contain only the price details and strictly in Price Bid format along with explicit break up of basic prices and applicable GST. Basic price should include packaging forwarding, freight, transit insurance and any other cost envisaged by the bidder.

Third part has to be submitted through E-Tender System (ARIBA) only.

FOR BIDS INVITED THROUGH E-TENDER SYSTEM (TECHNICAL AND UN-PRICED COMMERCIAL BID) :

In response to advertisement Bidder has to provide details of person authorized to Bid on behalf of the Bidder. An e-mail will be generated by E-Tender System and the authorized person can download the Tender Documents from the system.
SECOND and THIRD PART of the Bid have to be submitted in E-Tender System.

Bidders have to mandatorily submit SECOND PART (Technical and Un-priced commercial Bid) only through E-Tender system of Tata Power. Bids submitted through any other form/ route shall not be admissible.

EMD
"Please mention Tender Reference No"

Please mention our Tender Reference No on the Tender and drop the same in our Tender Box located at The Tata Power Company Limited, Smart Center of Procurement Excellence,2nd Floor, Sahar Receiving Station, Near Hotel Leela, Sahar Airport Road, Andheri East, Mumbai-400059

Bids submitted by Email/Telex/Telegram /Fax will be rejected. No request from any Bidder to Tata Power to collect the proposals from Courier/Airlines/Cargo Agents etc. shall be entertained.

SIGNING OF BID DOCUMENTS:

The bid must contain the name, residence and place of business of the person or persons making the bid and must be signed and sealed by the Bidder with his usual signature. The names of all persons signing should also be typed or printed below the signature.

The Bid being submitted must be signed by a person holding a Power of Attorney authorizing him to do so, certified copies of which shall be enclosed.

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The Bid submitted on behalf of companies registered with the Indian Companies Act, for the time being in force, shall be signed by persons duly authorized to submit the Bid on behalf of the Company and shall be accompanied by certified true copies of the resolutions, extracts of Articles of Association, special or general Power of Attorney etc. to show clearly the title, authority and designation of persons signing the Bid on behalf of the Company. Satisfactory evidence of authority of the person signing on behalf of the Bidder shall be furnished with the bid.

A bid by a person who affixes to his signature the word 'President', 'Managing Director', 'Secretary', 'Agent' or other designation without disclosing his principal will be rejected.

The Bidder's name stated on the Proposal shall be the exact legal name of the firm.

3.2 Contact Information

Communication Details: Detailed in 1.1

3.3 Bid Prices

Bidders shall quote for the entire Scope of Supply/ work with a break up of prices for individual items and Taxes & duties. The bidder shall complete the appropriate Price Schedules included herein, stating the Unit Price for each item & total price with taxes, duties & freight up to destination at various sites of Tata Power. The all-inclusive prices offered shall be inclusive of all costs as well as Duties, Taxes and Levies paid or payable during the execution of the supply work, breakup of price constituents.

The quantity break up shown else-where other than Price Schedule is tentative. The bidder shall ascertain himself regarding material required for completeness of the entire work. Any items not indicated in the price schedule but which are required to complete the job as per the Technical Specifications/ Scope of Work/ SLA mentioned in the tender, shall be deemed to be included in prices quoted.

3.4 Bid Currencies

Prices shall be quoted in Indian Rupees Only. It also may be noted that the denomination of Purchase Order / Outline Agreement / Rate Contract and associated Payment to Successful Bidder shall also be in Indian Rupees Only. In case Bidder intends to import any equipment, part etc and supply to Tata Power then all liability and costs related to import will rest with the Bidder. All statutory compliances, payments, expenditure etc related to importing of equipment will be responsibility of the bidder.

3.5 Period of Validity of Bids

Bids shall remain valid for 180 days from the due date of submission of the bid.

Notwithstanding clause above, Tata Power may solicit the Bidder's consent to an extension of the Period of Bid Validity. The request and responses thereto shall be made in writing.

3.6 Alternative Bids

Bidders shall submit Bids, which comply with the Bidding documents. Alternative bids will not be considered. The attention of Bidders is drawn to the provisions regarding the rejection of Bids in the terms and conditions, which are not substantially responsive to the requirements of the bidding documents.

3.7 Modifications and Withdrawal of Bids

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The bidder is not allowed to modify or withdraw its bid after the Bid's submission. The EMD as submitted along with the bid shall be liable for forfeiture in such event.

3.8 Earnest Money Deposit (EMD)

The bidder shall furnish, as part of its bid, an EMD amounting as specified in the tender. The EMD is required to protect the Tata Power against the risk of bidder's conduct which would warrant forfeiture.

The EMD shall be in following form:

- Bank Guarantee valid for 180 days after due date of submission.

The EMD shall be forfeited in case of:

a) The bidder withdraws its bid during the period of specified bid validity.

Or

b) In case of a successful bidder, if the Bidder, within 15 days, does not
i) accept the purchase order, or
ii) furnish the required Contract Performance Bank Guarantee (CPBG)

Original Bank Guarantee submitted as EMD shall be returned only after completion of award process for unsuccessful bidders and issue of Contract Performance Bank Guarantee (CPBG) for successful bidder.

4. Bid Opening & Evaluation process

4.1 Process to be confidential

Information relating to the examination, clarification, evaluation and comparison of Bids and recommendations for the award of a contract shall not be disclosed to Bidders or any other persons not officially concerned with such process. Any effort by a Bidder to influence Tata Powers processing of Bids or award decisions may result in the rejection of the Bidder's Bid.

4.2 Technical Bid Opening

Bids will be opened at Corporate Office of Tata Power as per our standard Process. The bids shall be opened internally by Tata Power. Technical bid must not contain any cost information whatsoever.

First the envelope marked "EMD" will be opened. Bids without EMD of required amount/ validity in prescribed format, shall be rejected.

Next, the technical bid of the bidders who have furnished the requisite EMD will be opened in E-Tender system.

4.3 Preliminary Examination of Bids/Responsiveness

Tata Power will examine the Bids to determine whether they are complete, whether any computational errors have been made, whether required sureties have been furnished, whether the documents have been properly signed, and whether the Bids are generally in order. Tata Power may ask for submission of original documents in order to verify the documents submitted in support of qualification criteria.

Prior to the detailed evaluation, Tata Power will determine the substantial responsiveness of each Bid to the Bidding Documents including production capability and acceptable quality of the Goods offered.

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A substantially responsive Bid is one, which conforms to all the terms and conditions of the Bidding Documents without material deviation.

Bid determined as not substantially responsive will be rejected by the Tata Power and/or the Tata Power and may not subsequently be made responsive by the Bidder by correction of the non-conformity.

4.4 Techno Commercial Clarifications

Bidders need to ensure that the bids submitted by them are complete in all respects. To assist in the examination, evaluation and comparison of Bids, Tata Power may, at its discretion, ask the Bidder for a clarification on its Bid for any deviations with respect to the Tata Power specifications and attempt will be made to bring all bids on a common footing. All responses to requests for clarification shall be in writing and no change in the price or substance of the Bid shall be sought, offered or permitted owing to any clarifications sought by Tata Power.

4.5 Price Bid Opening

The EMD of the bidder withdrawing or substantially altering his offer at any stage after the technical bid opening will be forfeited at the sole discretion of Tata Power without any further correspondence in this regard.

Arithmetical errors will be rectified on the following basis: If there is a discrepancy between the unit price and the total price per item that is obtained by multiplying the unit price and quantity, the unit price shall prevail and the total price per item will be corrected. If there is a discrepancy between the Total Amount and the sum of the total price per item, the sum of the total price per item shall prevail and the Total Amount will be corrected.

4.6 Reverse Auction and Price Matching Option

Tata Power reserves the right to go for Reverse Auction (RA) for price negotiation and discover the most competitive price on ARIBA portal, Tata Power's official e-tendering platform. This will be decided after techno-commercial evaluation of the bids. Bidders need to give their acceptance with the offer for participation in RA. Non-acceptance to participate in RA may result in non-consideration of their bids, in case Tata Power decides to go for RA.

Only those bidders who are techno-commercially qualified shall be eligible to participate further in RA process. However, the original H1 bidder (whose price bid is the highest post techno-commercial evaluation) shall not be allowed to participate in further RA process provided minimum three techno-commercially qualified bids are available.

For case where more than one bidders have to be awarded (including Rate Contract / Outline Agreement) Price Matching Option will be exercised. Volume of job allocated to original competitive bidder will be more than bidder who is chosen through Price Matching Option. Tata Power decision regarding work sharing shall be final and no explanation OR clarification shall be given regarding the same.

5.0 Award Decision

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Tata Power will award the contract to the successful bidder whose bid has been determined to be the lowest-evaluated responsive bid as per the Evaluation Criterion mentioned at Clause 2.0. The Cost for the said calculation shall be taken as the all-inclusive cost quoted by bidder in Priced Bid Format subject to any corrections required in line with Clause 4.3 above. The decision to place purchase order/Outline Agreement/ Rate Contact solely depends on Tata Power on the cost competitiveness across multiple lots, quality, delivery and bidder's capacity, in addition to other factors that Tata Power may deem relevant.

Tata Power reserves all the rights to award the contract to one or more bidders so as to meet the delivery requirement or nullify the award decision without assigning any reason thereof.

In case any supplier is found unsatisfactory during the delivery process, the award will be cancelled and Tata Power reserves the right to award other suppliers who are found fit.

5.1 Rate Contract / Outline Agreement

Rate Contract / Outline Agreement does not guarantee any assured business volume in Rupees or Quantity. Quantities are only indicative and specified for the purpose of readiness as per the request from Purchaser. Supplies shall be only against Firm Purchase Orders placed as per the agreed terms and conditions of Rate Contract / Outline Agreement. Purchaser shall be entitled at its discretion to place firm order for such supplies on "As and When Required Basis" without minimum take-off guarantee.
Rate Contract / Outline Agreement will have list of Items with Unit Rate and applicable Taxes and Duties. There will be a cap on value for which order which can be placed against the Rate Contract / Outline Agreement. Actual quantity ordered for each line item may differ significantly from the tentative quantity indicated in the Tender Document. One / few / all items of Rate Contract / Outline Agreement can be ordered till the Cap Value is reached.

6.0 Order of Preference/Contradiction:

In case of contradiction in any part of various documents in tender, following shall prevail in order of preference:

1. Outline Agreement/Purchase Order (with Commercial conditions)
2. Special Terms and conditions (if applicable)
3. General Terms and conditions
4. Technical Specifications

In case there is a discrepancy in the BOQ mentioned in tender (to the extent modified through subsequent Corrigendum, if any) and the bid submitted by any bidder, the description as mentioned in the tender (to the extent modified through subsequent Corrigendum, if any) shall prevail.

7.0 Ethics

Tata Power is an ethical organization and as a policy Tata Power lays emphasis on ethical practices across its entire domain. Bidder should ensure that they should abide by all the ethical norms and in no form either directly or indirectly be involved in unethical practice.

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Tata Power work practices are governed by the Tata Code of Conduct. Bidder is request to refer Tata Code of Conduct Clause in General Terms and Conditions.

8.0 General Condition of Contract and Special Condition of Contracts

Any condition not mentioned above shall be applicable as per General Terms and Conditions and Special Condition of Contracts attached along with this tender.

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Annexure 1

Schedule Of Items

Sr. no.	Material / Service Short Text (as per SAP)	Duration	UoM	Unit Rate (Basic)	Total with GST
1	OLA for RI work at Mumbai Distribution	3	Years		

(All Values to be entered in Indian Rs.)

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AGREED TERMS & CONDITIONS (ATC)- Indigenous Service

Bidder's Name: M/s. _____

RFQ ref. No. CC27AAM027
Enquiry Description: 3 year OLA for RI work at Mumbai Distribution.

Bidder's Offer Ref.: *<pls mention your offer reference no here>*

1. SUBMISSION OF THIS DOCUMENT DULY SIGNED, SHALL CONSTRUE THAT ALL THE CLAUSES OF AGREED TERMS AND CONDITIONS HAVE BEEN ACCEPTED BY YOU. PURCHASE ORDER, IF ANY, SHALL BE GOVERNED BY THE CONFIRMATION PROVIDED HERE.

S. No.	Description	BIDDER'S RESPONSE
A	**TECHNICAL**	
1	Acceptance of technical specifications / scope of work including General/Technical notes as per Tender specification **In case of deviation, confirm that the same has been furnished separately.**	
2	Confirm data sheets duly filled in have been submitted, wherever required as requested in Technical specification/ Scope of work	
B	**COMMERCIAL**	
3	**Bid Validity** Confirm Bid Validity 180 days from date of bid submission.	
4	**Firm price:** Negotiated prices shall remain firm for a particular year.	
5	**Delivery Terms** Confirm delivery terms FOT/FOR for any spares/consumables	
6	**Packing & Forwarding** Confirm that Packing & Forwarding charges including Special Packaging Requirement (if applicable) are included in base price	
7	**Freight Charges** Confirm that Freight charges are included in base price	
8	**Taxes and duties:** GST: __% HSN/ SAC Code: Any other tax as applicable:	
9	**Price Reduction / LD / SLA**: Confirm that Bidder agrees to the LD charges as specified in GCC file and agrees to SLA document	
10	**Completion/Delivery Period:** Confirm as per RFQ requirements Mention the delivery timelines from the date of order	
11	**Payment Terms Acceptance:** Confirm acceptance to the Payment terms as specified in GCC.	
12	**Warranty / Latent Defect Liability Period:** Defect liability period will be 6 months from completion of services**.**	
13	**Contract Performance Bank Guarantee**: Confirm acceptance to Submission of CPBG as per GCC	
14	**Testing and Inspection charges (if applicable):** Confirm the quoted are Inclusive of all testing and inspection charges as per Tender specification	

S. No.	Description	BIDDER'S RESPONSE
15	**Compliance to other terms & conditions** Acceptance of all other terms & conditions as forming the Part of the RFQ/ Tender document and communicated vide subsequent addendum(s) if any: **In case of deviation, confirm that the same has been furnished separately.**	

*Bidders / Vendor shall note that in case of any contradiction between the Agreed Terms and Conditions (ATC); and the Bidders offer, the ATC shall prevail.

Bidder's Authorised Signatory and stamp:

Name:

1.0 DEFINITION OF TERMS AND PRELIMINARY CONDITION OF CONTRACT

1.1 DEFINITIONS:

1.1.1 In the Contract (as defined below), unless the context requires otherwise the words and expressions defined below shall have the meaning hereinafter assigned to them.

1.1.2 "Affiliate for Owner" shall mean an entity controlled by a Party directly or indirectly through ownership of voting securities or by Contract or otherwise. "Affiliate for Contractor" shall mean an entity controlling, controlled by, or under the common control with, a Party directly or indirectly through ownership of voting securities or by Contract or otherwise.

1.1.3 "Annexure" means all appendices, annexure and schedules annexed to this Contract or incorporated by reference herein and shall include all amendments and revisions thereto made by mutual agreement of Owner/Project Manager and Contractor in accordance with the provisions contained in this behalf in this Contract.

1.1.4 "Applicable Laws" means all laws, treaties, ordinances, rules, regulations applicable in India and amendments, re-enactments, revisions, applications, and adaptations thereto made from time to time and in force and effect, judgements, decrees, injunctions, writs and orders of any court, arbitrator or governmental agency or authority, rules, regulations, orders and interpretations of any Governmental Instrumentality, court or statutory or other body having jurisdiction over construction of the Facility on the Facility Site, performance of the Work or supply of Goods, including Applicable Permits, as may be in effect at the time of performance of work or supply of Goods hereunder by the Contractor, which time would include Defects liability period as appropriate, provided, however, that if at any time the Applicable Laws are less stringent than the standards set forth in the Contract hereto, the standard set forth in the contract hereto shall be deemed to be the standards under Applicable Laws.

1.1.5 "Applicable Permits & Clearances" means any and all permits, clearances, authorizations, consents, licenses (including without limitation any import or export licenses), lease, ruling, exemption, filing, agreements, or approvals, required to be obtained or maintained in connection with construction of the Works on the Site, performance of Work, respectively by the Contractor and the Owner/Project Manager in accordance with the Contract and their maintenance, as may be in effect at the time of Contractor's performance of Work or supply of Goods hereunder.

1.1.6 "Bid" means the offer of the Contractor to the Owner/Project Manager in response to the Tender Document as set forth in the Final Proposal.

1.1.7 "Business Day" means a day other than a Sunday or public holiday on which banks are open for domestic business in the city/area where project site is located.

1.1.8 "Cause" in relation to the revocation or amendment of any Permit means any fact or circumstance, including without limitation any default, neglect or failure to abide by any of the terms and conditions of such Permit.

1.1.9 "Change in Law" means the occurrence of any of the following after the Effective Date of this Agreement.

a) The enactment of any or issuance of any new Indian law that becomes applicable law

b) The amendment or repeal, or re-enactment of any existing Applicable law

c) A change in the interpretation or application or enforcement of any Applicable Law by Government instrumentality

d) The revocation or cancellation of any Applicable Permit unless due to a cause attributable to the Contractor.

"Change in Law" shall however exclude:

a) Any change in minimum wages or change in market labour rates whether or not arising out of or pursuant to any new enactments of labour laws including but not limited to Payment of Minimum Wages Act and including periodic revisions in the minimum wages announced by the authorities which shall be deemed to be factored in the Contract Price / price variation clause if any mutually agreed.

b) Any changes in price of fuels (petrol and diesel), oils and lubricants or the likes pursuant to any ministry / government notifications thereon which shall be deemed to be factored in the Contract Price / price variation clause if any mutually agreed.

c) Any inflation of basic price of input materials which shall be deemed to be factored in the Contract Price / price variation clause if any mutually agreed.

1.1.10 "Change Order" means a written order from the Owner/Project Manager to the Contractor after the Effective Date of the Contract requiring a change in any part of the Work or supply of Goods that may involve:

a) A change in the Scope of Work or supply of Goods,

b) An additional Work or supply of Goods,

c) The omission of a portion of the Work or supply of Goods or

d) If appropriate, an adjustment in one or more of the (i) Contract Prices, (ii) Completion Dates, (iii) Milestone Payment Schedule, (iv) any of the Performance Guarantees, or (v) any provision of this Contract including any Annexure or Schedule hereto or

e) Any of the above in combination.

1.1.11 "Change Order Notice" means a written proposal issued and signed by Owner/Project Manager requesting a change, submitted to Contractor by Owner/Project Manager.

1.1.12 "Change Order Request" means a written notice to Owner/Project Manager issued by Contractor indicating that a change order is required in connection with the performance of the work or supply of goods.

1.1.13 "Commissioning" shall mean integrated activity covered under "Preliminary Operation", "Initial Operation", "Trial Operation" and carrying out "Tests before Taking-Over" of Relevant Package under the Contract.

1.1.14 "Contract" means the documents as set out in the form of Contract Agreement in relation to the Work between the Parties as may be amended, supplemented or modified from time to time by agreement in writing between the Parties.

1.1.15 "Contract Period" or "Period of Contract" or "Contract duration" means the period from the Effective date up to and including the last day of the Defect Liability Period.

1.1.16 "Contract Price" or "Contract Value" or "Contract Sum" means the lump sum fixed price or unit rates of items as stated in the Contract or such price as may be modified and as payable by the Owner/Project Manager to the Contractor in consideration of it performing the Works or supply of Goods including all obligations of the Contractor under and in accordance with the provisions of the Contract.

1.1.17 "Contractor's Works" shall mean the places which are used by the Contractor or any of its sub-vendor / Sub-contractor for the manufacture of equipment or fabrication of materials for the performance of Work.

1.1.18 "Contractor's Equipment" means all machinery, apparatus, equipment, appliances, Materials, items and other things (other than temporary Works) of whatsoever nature required for the execution and completion of the Works, performance of the Contractor's obligations under the Contract including supply of Goods and Work, establishing of Performance Guarantees, and the remedying of any defects and deficiencies, but does not include equipment, apparatus, appliances, machinery, Materials, items and other things of whatsoever nature intended to form or forming part of the Works or Relevant Package or the Plant/Facilities.

1.1.19 "Contractor" means the entity / person / joint venture or consortium whose Bid has been accepted by the Owner/Project Manager and is awarded the Works under this Contract, and the legal successors in title to such person who satisfies the qualification criteria set forth in the Tender Documents.

1.1.20 "Contractor Permits" means all Permits, required by the Contractor from any Government Instrumentality for the performance of his obligations.

1.1.21 "Contractor's Representative" means the person named as such in the Contract or other person appointed and from time to time communicated in writing to the Owner/Project Manager by the Contractor in his place in accordance with the terms of the Contract.

1.1.22 "Contractual Time for Completion" shall mean the timeline set forth for the successful completion of all the Works including 'Tests before Taking Over' and issuance of Provisional Acceptance Certificate (PAC) by the Owner/Project Manager as per clause 8.1 of this Section.

1.1.23 "Completion of Works" shall mean successful completion of all Works including Performance Tests (if any) and 'Tests Before Taking Over' and issuance of Final Acceptance Certificate (FAC) by the Owner/Project Manager as per clause 8.2 of this Section.

1.1.24 "Consultant" or "Engineer" shall mean Consulting Engineers appointed by the Owner/Project Manager for the Project and shall include their duly authorised representatives.

1.1.25 "Day" means a calendar Day of 24 (twenty-four) hours and "Year" means 365 (three hundred and sixty-five) days.

1.1.26 "Documents" means and includes all design documents, engineering documents, Drawings, calculations, computer software (programs), computer media, samples, patterns, models, construction documents, erection documents, Operation and Maintenance Manuals, and other manuals, and the like as well as, all other data and information to be submitted by the Contractor and shall include without limitation, engineering, design and construction drawings, data sheets, specifications, plans, bills of Materials and estimates.

1.1.27 "Drawings" shall mean all:

a) Drawings furnished by the Owner/Project Manager or the Consultant.

b) Supplementary drawings furnished by the Owner/Project Manager or the Consultant to clarify and to define in greater detail the intent of the Contract.

c) Drawings submitted by the Contractor with his proposal provided such drawings are acceptable to the Owner/Project Manager or the Consultant.

d) Engineering data and drawings submitted by the Contractor during the progress of the Work under the Contract, provided such engineering data and drawings are acceptable to the Consultant or the Owner/Project Manager.

1.1.28 "Effective Date" or "Effective Date of Contract" or "Date of award" means the date on which the Contract comes into force and effect, i.e. the date of issue by the Owner/Project Manager of the Letter of Intent or Notice to Proceed or as defined in the Contract Agreement.

1.1.29 "Facility" or "Plant" means, collectively, the Relevant Package, other Packages either awarded or to be awarded at a later date to Other Contractors and other apparatus, appliances, machinery, equipment, components and other Works, together with all auxiliaries, Materials, apparatus, appliances others things whatsoever and related buildings as an integrated whole, including without limitation all systems and sub-systems thereof and related facilities, including without limitation any and all appliances, parts, instruments, appurtenances, accessories and other property that may be incorporated or installed in or attached to or otherwise become part of the Plant or as envisaged in the Contract or which otherwise constitutes a part of the Facility and located on Site.

1.1.30 "Final Take-over" means the acceptance by the Owner/Project Manager of the Works as a whole in accordance with Contract.

1.1.31 "Final Payment Certificate" means the payment certificate issued by the Owner/Project Manager or his Representative thereof to the Contractor.

1.1.32 "Financing Document" means any document relating to the: Debt or equity financing to the Owner/Project Manager for provision of funds for the development, Design, construction and /or operation of the Plant; or funds for refinancing part or whole or take-out of any such financing.

1.1.33 "Force Majeure Event" shall have the meaning set forth in clause no. 17.0 of these Conditions of the Contract.

1.1.34 "Foreign Currency" means a freely convertible currency, specified in the Schedule of Prices mentioned elsewhere in Contract in which part of the Contract Price is payable, but not Indian Rupees.

1.1.35 "General Conditions of Contract" means also referred as "GCC" means these Terms and General Conditions of Contract as mutually amended in accordance with the provisions contained in this behalf herein as applicable to scope of supply of Goods or Works.

1.1.36 "Goods" means all of the materials, equipment, machinery, apparatus, appliances, components and/or other Materials and things, which the Contractor is required to supply to the Owner/Project Manager under the Contract.

1.1.37 "Good Engineering Practices" means those practices, methods, acts, techniques and standards as may be followed or employed in the performance of the Work or supply of Goods and discharge of its obligations by the Contractor and which (i) are generally accepted internationally for use in the Construction and electric utility industry, taking into account conditions in India, in connection with the works of the same or similar size and type as the Relevant Package, (ii) are commonly used in prudent engineering, construction, project management and operations, and (iii) would be expected to result in performance of the Services and completion of Works in a manner consistent with Applicable Laws, Applicable permits, reliability and safety.

1.1.38 "Government Instrumentality" or "Government" means the Government of India, the Government of State and any other State, or any political subdivision, ministry, department, agency, corporation, commission or any regional, local or municipal authority or governmental body thereof or any other governmental or statutory body under the direct or indirect control of

the Government of India or Government of State or of any other State, or of any political subdivision, ministry, department, agency, corporation, commission, or any regional, local or municipal authority or governmental body thereof, and shall include without limitation any other governmental or statutory body having jurisdiction over the facility or over the performance of any part of Work or the Works or any obligation of the Contractor or the Owner/Project Manager under the Contract.

1.1.39 "Guaranteed Completion Date" or "Guaranteed Completion Dates" means, individually or collectively, the date by which contracted Works for the Relevant Package shall be completed as per the agreed Contractual Time for Completion.

1.1.40 "Hazardous Materials" means (i) hazardous materials, hazardous wastes, hazardous substances, toxic substances or contaminants as those terms are defined under any environmental law or regulation, including, but not limited to, Applicable Laws, and in the regulations adopted or promulgated pursuant thereto; (ii) petroleum and petroleum products including crude oil and any fractions thereof; (iii) any other hazardous, radioactive, toxic or noxious substance, material, pollutant, or solid, liquid or gaseous waste; and (iv) any substance that, whether by its nature or its use, is subject to regulation under any environmental law or with respect to which any applicable environmental law or any Governmental Instrumentality requires environmental investigation, monitoring or remediation.

1.1.41 "Inspector" shall mean the authorised representatives appointed by the Owner or Project Manager or the Consultant or Owner's/Project Manager's Third-Party Inspection Agency for purpose of the inspection of materials / Equipment / works / Services.

1.1.42 "Intellectual Property" means copyrights conferred under statute, common law or equity in relation to inventions (including patents) registered and unregistered trademarks and service marks registered and unregistered designs, circuit layouts, confidential information, proprietary information and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields."

1.1.43 "Interim Payment Certificate" means any payment certificate other than Final Payment Certificate, issued by the Owner/Project Manager.

1.1.44 "Latent Defect" shall mean the defects inherently lying within the Goods or Works which do not manifest during normal inspections carried out by the Owner/Project Manager or the defects inherently lying within the Goods or Works or the Relevant Package which do not manifest during the normal operations and maintenance of the Relevant Package / Plant during the Defects Liability Period.

1.1.45 "Liquidated Damages" means the appropriate measures of the damages for such delays or such shortfalls in performance by the Contractor and are neither penalty nor consequential damages sustained by Owner/Project Manager as a result of such delays and / or shortfalls, as set forth in relevant clause hereof.

1.1.46 "Manuals" means all the various instruction manuals to be provided as per the Contract by the Contractor and shall include Manuals described in Specifications or General Conditions of Contract.

1.1.47 "Manufacturer" means any entity or firm who is the producer and furnisher to the Contractor of any material or designer and fabricator of any equipment / systems which is to be incorporated in or forms part of the Plant / work.

1.1.48 "Materials" means Goods and other things of all kinds to be provided and incorporated, to be used in the permanent Works / Plant/ Works by the Contractor, including Goods purchased by

the Owner/Project Manager and supplied to the Contractor or as a free issue or the supply-only items (if any) which are to be supplied by the Contractor under the Contract.

1.1.49 "Milestone Payment Schedule" means the document which sets forth the limits of payments to be released (worked out, inter alia, on the basis of payment terms agreed by the Owner/Project Manager) by linking such payment limits (in terms of percentages) with detailed milestones commencing from the Effective date. Such percentages shall be with reference to the Contract Price.

1.1.50 "Month" shall mean calendar month or a period of 30 (thirty) days as relevant to the context.

1.1.51 "Monthly Progress Report" or "Progress Report" means a progress report of the Works meeting the requirements set forth in Specification hereto or as instructed by the Owner/Project Manager.

1.1.52 "Notice in Writing" or "Written Notice" shall mean a notice in writing, typed or printed or hand written characters, sent (unless delivered personally or otherwise proved to have been received) by registered post or by electronic transmission to the last known private or business address or registered office of the addressee and shall be deemed to have been received when in the ordinary course of post or by electronic media it would have been delivered.

1.1.53 "Other Contractor" shall mean Contractors engaged by Owner/Project Manager for carrying out other works / work packages and other allied infrastructure facilities required for the Facility / Project.

1.1.54 "Owner" shall have the meaning as defined in the Special Conditions of Contract (SCC) or shall mean The Tata Power Company Limited (in case not defined in SCC) in the in its capacity as Owner of the Facility and the Works and shall include its successors and assigns, as well as authorised officers. "Project Manager" shall have the meaning as defined in the SCC (or shall mean The Tata Power Company Limited (in case not defined in SCC) and shall include its successors and assigns and shall include the authorised officers who can act as Owner's/Project Manager's representative for the Contract.

1.1.55 Owner's/Project Manager's Representative" means the person appointed by the Owner/Project Manager from time to time and notified as such to the Contractor to act as Owner's/Project Manager's Representative for the purposes of the Contract.

1.1.56 "Owner's/Project Manager's Instructions" shall mean any drawings, instructions, details, directions and explanations, in Writing issued by the Owner/Project Manager or the Consultant from time to time during the subsistence of the Contract.

1.1.57 "Owner/Project Manager Permits" means the permits, authorisations, consents and approvals required by the Owner/Project Manager to own, posses, operate and maintain the Works and to operate it for intended purpose.

1.1.58 "Party" means Owner/Project Manager or Contractor individually and "Parties" means Owner/Project Manager and Contractor collectively.

1.1.59 "Permanent Works" means the Permanent Works, equipment and Materials including all civil, electro-mechanical works designed, engineered, manufactured, installed, erected, supplied, executed, commissioned or tested in accordance with the Contract and which form part of the Facility.

1.1.60 "Performance Guarantees" or "Warranty" shall have the meaning set forth in Technical Specifications of Contract.

1.1.61 "Performance Test" means, the test to be carried out in accordance with the provisions of Technical Specifications of Contract to prove and establish the Performance Guarantees as per Technical Specifications of Contract.

1.1.62 "Permit" means any valid permit, authorisation, license, registration, approval, consent, waiver, and exemption, No-Objection Certificate, Approval, variance, franchise or any similar order of or from any Government Instrumentality, court or other body having jurisdiction over the matter in question.

1.1.63 "Person" means any individual, corporation, partnership, association, joint stock Company, trust, unincorporated organisation, Hindu undivided Family, joint venture, consortium, government or political subdivision or agency thereof.

1.1.64 "Preliminary Operation" means all activities undertaken as part of Commissioning after Civil and Mechanical Completion up to commencement of Initial Operation and shall include mechanical and electrical checkouts, calibration of instruments and protection devices, Commissioning of sub supporting systems and chemical cleaning of the system/equipment covered under Contract.

1.1.65 "Project" shall have the meaning as defined in the SCC and shall include the Facility and all the Works that are necessary for the Project.

1.1.66 "Project Documents" mean collectively this Contract, the State Implementation and Support Agreement, the Land Lease Agreement, Transportation Agreement and any other contracts entered into or to be entered into by the Owner/Project Manager with Other Contractors in connection with the Project including without limitation any contracts for Related Works.

1.1.67 "Provisional Acceptance" or "Take-over" means the provisional acceptance by the Owner/Project Manager of the Works, pursuant to the provisions of hereof.

1.1.68 "Prudent Utility Practices" means those practices, methods, equipment specifications and standards of safety and performance, as the same may change from time to time, as are generally accepted for use in electricity generating utilities taking into account conditions in India and commonly used in prudent electricity generation utility engineering and operations including design, engineering construction, erection, installation, Commissioning, testing, operation of the equipment comprised therein lawfully, safely, efficiently and economically for facilities of the type and size similar to the Project and that generally conforms to the Equipment Manufacturer's operation and maintenance guidelines and also any guidelines provided in this regard by any Government or statutory organisation or a Rating agency and the like.

1.1.69 "Punch List" means the list prepared by Owner/Project Manager at the time of Provisional take - over and thereafter periodically revised by Owner/Project Manager as necessary, and in any case updated by Owner/Project Manager within 20 (twenty) days following Owner's/Project Manager's receipt of a Notice of Final take-over, in each case with the full co-operation of Contractor, which list shall set forth certain items of Work which remain to be performed by the Contractor in order to ensure that the Works fully complies with all of the standards and requirements set forth in the Contract.

1.1.70 "Related Works" shall mean other than the Work under the Contract performed or to be performed by the Owner/Project Manager or Owner's/Project Manager's Other Contractors in connection with the Facility either prior to, concurrently or subsequently with the Works within or outside the Site with whom the Contractor shall co-ordinate and interface his activities covered by the Contract.

1.1.71 "Relevant Package" means, design (if applicable), engineering (if applicable), manufacturing, shop fabrication, assembly, testing and inspection at supplier's work, packing, dispatch, shipping,

inland transportation to Site, insurance up to time of Taking Over, delivery at Site, receipt, unloading, handling, storage and in-plant transportation at Site, site fabrication, erection installation, testing, commissioning, performance testing (as applicable) and handing over of the subject package as per the Requirement Specifications / Scope of Work defined in the Technical Specifications.

1.1.72 "Schedule" shall have the meaning set forth in relevant clause hereof.

1.1.73 "Site" or "Project Site" means all those parcels of land owned by Owner/Project Manager on which the Works will be located, as more particularly identified on the site plan and described in Drawings forming part of Contract hereto.

1.1.74 "Sub-contractor" means any person named in the Contract as a Sub-contractor, sub-vendor, Manufacturer or supplier for a part of the Works or any person to whom a part of the Works has been sub-contracted and the legal successors in title to such Person, but not any assignee of such Person.

1.1.75 "Take- over" or "Taking Over" shall mean taking-over of the Works for the purpose envisaged under the Contract upon completion of the Performance Tests and fulfilling the conditions as mentioned in relevant clause hereof.

1.1.76 "Take-over Certificate" means the certificate issued under relevant clause hereof.

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

1.1.78 "Tender Documents" means the Invitation to Bid together with all documents & amendments thereto and clarifications if any issued by the Owner/Project Manager or the Consultant from time to time in respect thereof.

1.1.79 "Tests" means all tests to be undertaken by the Contractor under or pursuant to the Contract including all the tests set forth in Technical Specifications.

1.1.80 "Tests before Take-over" means the tests prescribed in the Technical Specifications mentioned elsewhere in the Contract and any other such tests as may be agreed between the Owner/Project Manager and Contractor or instructed as a Change Order, which has to be carried out by the Contractor before the Taking Over of the Works.

1.1.81 "Trial Operation" shall have the same meaning as per Technical Specification of Contract.

1.1.82 "Technical Specifications" or "Specification" means all the specifications, drawings, datasheets, BOQ, scope etc which are part of Contract and which form part of technical, performance, workmanship, warranty, scope and all other requirement of the Works as stated therein.

1.1.83 "Warranty Period" or "Defects Liability Period" shall have the meaning as elaborated in Clause no. 10.2.

1.1.84 "Works" or "Services" means all the work and obligations of the Contractor under the Contract including without limitation, the work and services briefly described in Specifications including permanent works and temporary works as appropriate under the Contract.

1.1.85 "Writing" shall include any manuscript, typewritten e-mail or printed statement, under or over signature and/or seal of the originator or author as the case may be.

1.2 **Headings and Marginal Notes**

1.2.1 The section headings and marginal notes are not part of these Conditions and shall not be taken into consideration in their interpretation.

1.3 **Interpretation**

1.3.1 Words importing Persons or Parties shall include related firms and corporations and any organisation having legal capacity. Words importing the singular also include the plural and vice versa where the context requires. Words importing one gender also include other genders.

1.3.2 Unless inconsistent with the provisions of the Contract, the meaning of any shipping terms and the rights and obligations of the parties there under shall be as set forth in the latest International Chambers of Commerce (ICC) official rules for interpretation of trade terms as per "INCOTERMS 2020".

1.3.3 The term Contractor shall include its Sub-contractor as the context requires.

1.4 **Law, Language and Measurements**

1.4.1 Applicable law to this Contract shall be the Indian Law. The respective rights, privileges, duties and obligations of the Owner/Project Manager and the Contractor under this Contract shall be governed and determined by the Laws of State and of the Republic of India.

1.4.2 The official text of this Contract shall be English, regardless of any translation that may be made for the convenience of the Parties. All correspondence, information, literature, data, manuals, definitive documents, notices, waivers and all other communication, written or otherwise, between the Parties in connection with this Contract shall be in English language only.

1.4.3 All measurements shall be in metric system.

1.5 **Stamp Duty and Similar Charges**

The costs of stamp duties and similar charges imposed by the Applicable Law (including but not limiting to Indian Stamps Act & Indian Registration Act) on the Contract or Agreement or any part thereof shall be borne by the Contractor.

1.6 **Effective Date of Contract**

The Contract shall be deemed to have come into force and effect from the date of issue of the Letter of Intent (LOI) or Purchase Order (PO) by the Owner/Project Manager to the Contractor or date of signing of the Contract / Contract Agreement whichever is earlier.

1.7 **Priority of Documents**

The order of precedence of the following documents shall be as listed herein below. The Contractor is deemed to have full knowledge and understanding of the contents of all the documents whether contained in or incorporated by reference thereto, and accepted all the terms and conditions contained therein:

a) The Contract Agreement including Special Conditions of Contract, and General Conditions of Contract, Schedule of Prices, all Schedules and Appendices, Technical Specifications

b) Owner's Letter of Intent to the Contractor

c) Post tender correspondence including jointly signed minutes of meetings with the Contractor and jointly signed record notes of tender negotiations

d) Tender document

The order of precedence for Annexures to Contract Document shall be as listed herein below:

(i) Contractor's Implementation Plan including Contractor's Organization and Key Personnel

(ii) Approved List of Sub-contractors & Vendors

(iii) Responsibility Matrix for Permits, Approvals and Clearances as they shall apply to this Contract Agreement

(iv) Owner's / Project Manager's Contractor Safety Terms & Conditions, Health Safety & Environment Policies, Responsible Supply Chain Management and Sustainability Policies

In the event of any ambiguity or conflict between any of the foregoing Contract Document, the Contractor shall prior to the commencement of supplies or work be deemed to have clarified from the Owner/Project Manager any such ambiguities or conflicts.

1.8 **Documents on Site**

The Contractor shall keep on the site one complete set of the Contract, the Documents, Change Orders, communications given or issued under various clauses duly authenticated by the Owner's Representative. These Documents shall be either true copies or original documents, the same being verified as true copies by Owner's Representative. The Owner/Project Manager, the Owner's Representative and his delegates (as referred to in sub-clause 2.4) shall have the right to use such Documents at all reasonable times.

1.9 **Communications**

All certificates, notices, instructions, communications, consents, approvals, orders or determination to be given to the Contractor by the Owner/Project Manager or the Owner's Representative, (in as many copies required) and all notices or communication, to be given to the Owner/Project Manager or to the Owner's Representative by the Contractor, shall be in Writing and may either be delivered by hand against written acknowledgement of receipt, or be sent by airmail or one of the agreed systems of electronic transmission as agreed by the Owner/Project Manager. The Contractor shall maintain a separate set of copies of all the inward and outward correspondences which should be produced at any time if need be. The Contractor shall act or modify actions only on the basis of valid written communications received from the Owner/Project Manager / Owner's representative and would need to provide the documentary evidence (correspondences received from Owner/Project Manager / Owner's Representative) if required by the Owner/Project Manager.

1.10 **Provision of Documents**

1.10.1 The Documents referred to in Technical Specifications shall be in the custody and care of the Contractor. The Contractor shall furnish to the Owner/Project Manager / Owner's Representative Documents, Drawings, etc. as per Technical Specifications.

1.10.2 In addition, and without prejudice to the foregoing, the Contractor shall provide to the Owner/Project Manager "as built" Drawings of the Relevant Package consequent to Provisional Acceptance and only after the delivery of such as built Drawings, the Final Acceptance shall take effect.

1.11 **Contractor's Use of Owner/Project Manager's Documents**

1.11.1 Copyright in the Owner/Project Manager's requirements and other Documents issued by the Owner/Project Manager or the Owner's Representative to the Contractor shall (as between the parties) remain the property of the Owner/Project Manager. The design, engineering, Drawings

and Works layout shall be with the Owner/Project Manager. Contractor may, at its Cost, copy, use and communicate any such documents for the purposes of the Contract. They shall not, without the Owner/Project Manager's consent, be used, copied or communicated to a third party by the Contractor, except as necessary for the purposes of the Contract including performance of Work.

1.11.2 The Contractor shall indemnify and hold Owner/Project Manager, harmless from time to time from and against any all losses, claims, suits, proceedings, taxes, penalties, liability, damages, costs and expenses, suffered or incurred, arising out of or in connection with breach of this clause by the Contractor. If these Documents are received by a third party from the Contractor and the third party makes use of these Documents to cause harm or monetary loss to the Owner/Project Manager or use these Documents for their personal gain / monetary gain, the Contractor shall compensate the Owner/Project Manager for the loss suffered as well as for the value of gain derived by third party.

1.12 **Confidential Details**

1.12.1 The Contractor shall treat the details of the Contract as private and confidential, except to the extent necessary to carry out his obligations hereunder. The Contractor shall not publish, permit to be published, or disclose any particulars of the Contract in any trade or technical paper or elsewhere without the prior consent in writing of the Owner/Project Manager at the Owner/Project Manager's sole discretion.

1.12.2 The Contractor shall indemnify and hold Owner/Project Manager harmless from time to time from and against any all losses, claims, suits, proceedings, taxes, penalties, liability, damages, costs and expenses, suffered or incurred, arising out of or in connection with breach of Confidentiality obligations under this clause. If the confidential details relating to this Contract or its contents are received by a third party from the Contractor and the third party makes use of these details to cause harm or monetary loss to the Owner/Project Manager or use these Documents for their personal gain/ monetary gain, the Contractor shall compensate the Owner/Project Manager for the loss suffered as well as for the value of gain derived by the third party. The Contractor shall not use the confidential details of the Contract for any other purpose except for the strict purpose intended under the Contract.

1.13 **Contract Co-ordination and Interface**

1.13.1 From fiscal and execution considerations, the Owner/Project Manager may enter into independent stand-alone contracts with one or more Other Contractors for the other packages at the same premises.

1.13.2 The Contractor, shall be responsible for effective coordination and interfacing of all his contracting activities and obligations under the Contract with the activities and obligations of the Other Contractors and Related Works contractors in a seamless manner, irrespective of whether the same is specifically detailed in such Contracts, to ensure that the Guaranteed Time Schedule and Performance Guarantees set forth in the Contracts are properly fulfilled in a timely manner by all such Other Contractors.

1.13.3 It is the responsibility of the Contractor to interface, coordinate and cooperate with Other Contractors. Contractor shall share all information & details about the Works which are reasonably required by Other Contractors to perform works under their respective Contracts or to integrate the Works with Other Contractors' works if so required.

1.14 **Assignment**

1.14.1 The whole of the works included in the Contract shall be executed by the Contractor and the Contractor shall not directly or indirectly transfer, assign, sub-contract or sublet the Contract or

any part, share or interest therein nor shall he take a new partner without the written consent of the Owner/Project Manager. Without prejudice to the above, it is agreed that sub-contracting of all or part of its obligations under this Contract shall not relieve the Contractor from the full and entire responsibility of the Contract (including such obligations thereunder that have been sub-contracted) or from active superintendence of the works during their progress. There shall not be any change in Control of the Contractor without the prior written consent of the Owner / Project Manager.

1.14.2 If the Contractor shall cause any part of the work to be performed by the approved Sub-contractor, the provisions of this Contract shall apply to such Sub- Contractor and his or its officers, agents or employees in all respects as if they were employees of the Contractor, and the Contractor shall not in any manner thereby, be discharged from his obligations and liability hereunder, but shall be liable hereunder for all acts and negligence of his Sub- Contractor, Sub-contractor's officers, agents and employees, as if they were employees of the Contractor. No sub-contract shall be made by the Contractor, without the written approval of the Owner/Project Manager, of both the sub-contract and the Sub- Contractor, but no such approval of the Owner/Project Manager, of both the sub-contract and the Sub- Contractor, shall affect the provisions hereof or serve to relieve the Contractor of any of the responsibilities and liabilities as described above. Copies of all such sub-contracts shall be furnished to the Owner/Project Manager immediately upon the execution thereof. The Owner/Project Manager may request the Contractor at any time to terminate any sub-contracting arrangement if the Owner/Project Manager is not satisfied with the performance of such Sub-contractor and immediately upon receipt of such request, the Contractor shall terminate such sub-contracting arrangements. The Contractor shall ensure that all sub-contracting arrangements entered into by the Contractor allow it to terminate such sub-contracting arrangements in accordance with the instructions of the Owner/Project Manager, as set out above.

1.15 **Relationship between Parties**

1.15.1 This Contract has been entered into by the Parties on a principal-to-principal basis only. The Contract shall not be construed as a partnership or an association of persons. The contract does not create any agency, partnership, joint venture, or other joint relationship between the Parties hereto. The Owner, the Project Manager and the Contractor are independent Parties performing their respective obligations and responsibilities as specified under this Contract. Each Party shall be responsible for its own conduct. The Contractor shall at all times ensure that all the work carried out under this Contract either by its own person or through any of its Sub-contractors shall always be done under its own direct.

1.16 **Joint & Several Liability**

If the Contractor constitutes a joint venture, consortium of entities or other unincorporated grouping of two or more persons:

a) these entities / persons forming the consortium shall be deemed to be jointly and severally liable to the Owner/Project Manager for the performance of the Contract;

b) these entities / persons forming the consortium shall notify the Owner/Project Manager of their leader who shall have the authority to bind the Contractor and each of these entities / persons; and

c) the Contractor shall not alter the composition of the consortium or legal status without the prior written consent of the Owner/Project Manager.

2.0 OWNER/PROJECT MANAGER'S OBLIGATIONS

2.1 **Access and Right to Use of the Site**

The Owner/Project Manager shall grant the Contractor right of access to and make available the Site to the Contractor in accordance with the terms of the Owner/Project Manager's property rights within reasonable time after the Letter of Intent for the performance of the Work or pursuant to and in accordance with the Contract. Such right and use of the Site may not be exclusive to the Contractor. In the execution of the Works, no persons other than the Contractor or his duly appointed representative, duly authorised Sub-contractors and workmen, shall be allowed to do Work on the Site, except by the special permission, in writing by the Owner's representative.

2.2 **Permits Licences & Approvals**

2.2.1 The Contractor shall be responsible for applying and obtaining all the Permits, licenses or approvals as required to be obtained by Contractor for carrying out and completion of the Works, in time as per the Schedule agreed in the Contract. The Owner/Project Manager may, at the request and cost of the Contractor assist the Contractor in applying for Contractor Permits and other Construction Permits as defined herein. Such requests may also include requests for the Owner/Project Manager's assistance in applying for any necessary government consent for the export of Contractor's equipment when it is removed from the Site.

2.2.2 The Owner/Project Manager's assistance in applying for Permits, licenses or approvals (for which the Contractor is responsible under the Contract) is not obligatory and the extent of such assistance shall be at the sole discretion and convenience of the Owner/Project Manager. In any case, the obligations of the Contractor as set out herein shall continue, irrespective of the manner, outcome and extent of assistance from the Owner/Project Manager. All the necessary fees and any incidental charges required to be paid for obtaining all Contract permits shall be solely borne by and be the sole liability of the Contractor, without any recourse to the Owner/Project Manager. All statutory fees paid for obtaining the Permits / licenses / approvals pertaining for execution of the Project specified in Owner/Project Manager's scope shall be reimbursed by the Owner/Project Manager against submission of documentary evidence. However, Contractor shall obtain permits / Licenses, approvals required for carrying out his responsibilities at his cost.

2.3 **Owner/Project Manager's Other Obligations**

2.3.1 Owner/Project Manager shall

a) Designate a person as Owner/Project Manager's Representative (the "Owner's Representative") to be the contact for Contractor with respect to the performance of the Works and Contractor's obligation under the Contract, and shall be authorised to act for and on behalf of Owner/Project Manager and administer this Contract on Owner/Project Manager's behalf, agree up on procedures for co-ordinating Owner/Project Manager's efforts with those of Contractor and Other Contracts and as appropriate, make information available to Contractor.

b) Pay in a timely manner in accordance with Terms of Payment, subject to fulfilment of milestones and provided the Contractor is not in breach of Contract, the Contract Price and all other sums, if any, required to be paid by it to Contractor pursuant to the Contract.

2.4 **The Owner's Representative**

2.4.1 **The Owner's representative's Duties and Authority**

The Owner may appoint separate consultant/s to provide project management consultancy services for the Project. Such consultant/s shall act as an Owner's Representative to exercise the rights and carry out the duties of the Owner under the Contract. Owner's Representative shall

also include Consultant / Consulting Engineer or Third-Party Inspection Agency as required or deemed appropriate or authorised by the Owner/Project Manager. Any act, instruction or decision of the Owner's representative shall be as if this was an act, instruction or decision of the Owner.

The Contractor shall not be authorized to receive or act on instructions from any person other than the authorised Owner's Representative without prior written consent of the Owner and the Contractor shall be solely & entirely liable for the act of omission carried out under the instructions from any person other than the Owner or Owner's Representative.

Except as expressly stated in the Contract, the Owner's Representative shall have no authority to (a) amend, alter, modify or waive any provision or term of the Contract, or (b) relieve the Contractor of any of his duties, obligations or responsibilities under the Contract. Any proposal, inspection, examination, testing, consent, approval or similar act by the Owner's Representative (including absence or disapproval) shall not relieve or absolve in any manner whatsoever, the Contractor from any responsibility, liability or obligation under the Contract, including responsibility and liability for his errors, omissions, discrepancies, and non-compliance with the Specifications and any provisions of the Contract.

2.4.2 **Owner's Representative's instructions**

2.4.3 The Contractor shall comply with written decision instruction or order given by the Owner's Representatives (such as have been identified in writing by the Owner) in accordance with the Contract. The Contractor shall not be authorised to receive instructions from any other Person without the prior written consent of the Owner and the Contractor shall be solely and entirely liable for any acts or omissions carried out under instructions from any Person other than the Owner or a duly authorised Owner's Representative.

3.0 SCOPE OF CONTRACT

3.1 General

3.1.1 The Contractor shall carry out and complete the Works in every respect in accordance with this Contract and in accordance with the directions and to the satisfaction of the Owner/Project Manager. The Owner/Project Manager may at his absolute discretion from time-to-time issue further drawings and/or written instructions, details, directions and explanations which are hereafter collectively referred to as " Owner/Project Manager's Instructions" in regard to:

a) The variation or modification of the design, quality or quantity of works or the omission or substitution of any work.

b) Any discrepancy in the drawings or between the Schedule of Quantities and/or drawings and/or specification.

c) The removal from the site of any materials brought thereon by the Contractor and the substitution of any other materials thereof.

d) The removal and/or re-execution of any works executed by the Contractor.

e) The dismissal from the works of any persons employed thereupon.

f) The opening up for inspection of any work covered up.

3.1.2 The Contractor shall forthwith comply with and duly execute any work comprised in such Owner/Project Manager's Instructions provided always that verbal instructions, directions and explanations given to the Contractor or his Superintendent upon the Works by the Owner/Project

Manager shall, if involving a variation, be confirmed in writing by the Contractor within seven days and the Owner/Project Manager's written approval obtained. Rates of items not mentioned in the Schedule of Quantities and Rates shall be dealt with as extra items.

3.1.3 If compliance with the Owner/Project Manager's Instructions as aforesaid involves work beyond that contemplated by the Contract, then unless the same were issued owing to some breach of this Contract by the Contractor, the Owner/Project Manager shall pay to the Contractor the prices of the said work as an extra to be valued as hereinafter provided.

3.1.4 The Contractor shall be deemed to have scrutinised the correctness and completeness of the obligations and requirements as specified in the Tender Documents (including design criteria and calculations, if any). The Contractor shall be responsible for the design of the Works. The Owner/Project Manager shall not be responsible for any error, inaccuracy or omission of any manner in the Tender Documents as originally included in the Contract and shall not be deemed to have given any representation of accuracy or completeness of any data or information. Any issue (including and not limited to error, accuracy, completeness) with the data or information received by the Contractor, from the Owner/Project Manager or otherwise, shall not relieve the Contractor from his responsibility for the design and execution of the Works.

3.1.5 **Free Issue Materials / Equipment (FIM) (as applicable provided FIM is specified in SCC / Technical Specifications) to the Contractor by the Owner/Project Manager:**

If the Contract involves or the Owner/Project Manager & the Contractor mutually agree for the incorporation of any free issue materials / equipment by the Owner/Project Manager depending upon criticality & availability of the materials during the course of the Contract:

a) Not used

b) The Contractor shall inspect the free issue materials / equipment at the time of taking delivery thereof and satisfy itself of the quality, quantity and condition of the free issue materials / equipment. The Owner/Project Manager shall not be liable for any claims or complaints whatsoever in respect of the quality, quantity or condition of the Free issue materials / equipment once the Contractor has taken delivery thereof.

c) All free issue materials / equipment shall be taken delivery of, transported, held, stored and utilized by the Contractor as trustee of the Owner/Project Manager, and delivery of the Free Issue Material to the Contractor shall constitute an entrustment thereof by the Owner/Project Manager to the Contractor with the intent that any transportation, utilization, application or disposal thereof by the Contractor otherwise than for incorporation in the Indigenous Material(s) shall constitute a breach by the Contractor.

d) The Contractor shall transport the Free Issue Materials / equipment only by such transportation as is suitable and shall hold and store the Free issue materials / equipment only at such place and/or premises that are air and water tight and otherwise suitable for the storage of the Free issue materials / equipment so as to prevent damage or deterioration or theft or other loss, and shall arrange such watch and ward as shall be necessary to ensure the safety thereof. The Contractor shall exercise the at least the same level of care and diligence in respect of the use, storage, transportation or safety of the free issue materials / equipment that it exercises in respect of its own materials / equipment.

e) Notwithstanding the Bank Guarantee mentioned in sub-paragraph (a) above, the Contractor shall replace any Free issue materials / equipment which is/are lost, damaged, misused, stolen or deteriorated with other Material(s) of equivalent quantity and quality and condition, and the same shall be deemed to constitute Free issue materials / equipment and the provisions of sub-paragraphs (a) to (f) hereof shall apply

thereto in the same manner as to the originally supplied Free issue materials / equipment.

f) Unused Material(s) from the Free issue materials / equipment shall be returned by the Contractor to the Owner/Project Manager and if the Owner/Project Manager so directs, the Contractor shall dispose of the same by sale or otherwise on such terms and conditions as the Owner/Project Manager may stipulate or approve and the Contractor shall pay to the Owner/Project Manager the sale proceeds of the Material(s) so disposed of by sale.

g) Contractor shall ensure quarterly physical assessment of the stock of material issued to him by the Owner/Project Manager and submit the same in the form of Reconciliation.

h) The free issue materials will be supplied by the Owner in bags, sizes and lengths or in coils as available. The cost of all wastage, due to rolling tolerance, cutting, conversion, straightening and/or fabricating shall be borne by the Contractor, at the recovery rates given in item No (i) below, as long as wastage margin does not exceed following limits:

i) Cement at 2% - Reconciliation of cement shall be done as per standard practice as per relevant IS code and any wastage above 2% shall be recovered from the Contractor at the rate mentioned in item no (i) of clause 3.1.5 stated below.

ii) Structural steel at 3% of the theoretical requirements – 2.5 % is considered as visible wastage and 0.5 % as invisible wastage like gas cutting etc. Rolling tolerance if any shall be recorded separately and due credit or consideration shall be given during reconciliation. All scraps shall be the property of Owner. The scraps shall be properly accounted for and no scrap or cut pieces shall be removed from site or disposed off without prior inspection and written permission by the Engineer. All scraps are deemed to be included within the above allowances. The following dimensions shall be considered for reconciliation purposes:

a) Structural sections less than 75 mm in any dimension - 1.2 meters and above

b) Structural sections exceeding 75 mm in any dimension-2.0 meters and above

c) Plates-Up to 12mm thickness - 200mm x 200mm and above

d) Plates- 14mm to 25 mm thickness-300mm x 300 mm and above

e) Plates- 25mm thickness – 400mm x 400mm and above

Provided further, if the Engineer so desires, the Contractor shall have to return to the Owner cut pieces or scrap even below the dimension stated above. Due credit will be given for such return at rates to be fixed by the Engineer.

iii) Reinforcement steel at 3% of the theoretical requirements – 2.5 % is considered as visible wastage and 0.5% as invisible wastage like cutting etc. Rolling tolerance if any shall be recorded separately and due credit or consideration shall be given during reconciliation. All scraps shall be the property of Owner. The scraps shall be properly accounted for and no scrap or cut pieces shall be removed from site or disposed of without prior inspection and written permission by the Engineer. All scraps are deemed to be included within the above allowances. The following dimensions shall be considered for reconciliation purposes:

a) Reinforcement Steel Up to 16mm diameter – 2 meters and above

b) Reinforcement Steel above 16mm diameter – 3 meters and above

Provided further, if the Engineer so desires, the Contractor shall have to return to the Owner cut pieces or scrap even below the dimension stated above. Due credit will be given for such return at rates to be fixed by the Engineer.

i) Recovery for unaccountable wastages, i.e. in excess of limits stated as above or for the material that is not reconciled, shall be made from the Contractor at prevailing market rate plus 25 %. The Owner/Project Manager shall decide the quantities of materials for which such value is to be recovered and decision of the Owner/Engineer shall be final and binding.

3.2 **Labour and Personnel**

3.2.1 The Contractor shall make his own arrangements for the engagement of all staff and labour, local or otherwise, and for their payment, housing, food and transport. Any labour camps required for execution of Works shall be arranged by Contractor at its own cost. No parcel of land or other facilities shall be provided by the Owner/Project Manager.

Contractor shall provide all labour and personnel required in connection with work, including:

a) Professional engineers licensed in accordance with any applicable licensing requirements in India or by any other governmental instrumentality to perform engineering services pursuant to the Contract.

b) Project team of necessary engineers from various disciplines including, construction manager, Project engineer and civil, mechanical, electrical, instrumentation and control, costing, scheduling, procurement, construction, start-up and training supervisors, all of whom shall follow Good Engineering Practices and shall have had extensive experience in projects of similar nature and magnitude and shall be proficient in the English language and have knowledge of standard industry Practices, Applicable Laws and Applicable Permits.

c) A Project Coordinator or other Representative, who shall be fully acquainted with the Project, shall be proficient in the English language and shall have the authority to administer this Agreement on behalf of Contractor. He shall give his whole time to the construction, erection and execution of the Works and to directing the preparation of all documents required for the same. Except as otherwise stated in the Contract, the Contractor's Representative shall receive (on behalf of the Contractor) all notices, instructions, consents, approvals, certificates, determinations and other communications under the Contract. Whenever the Contractor's Representative is to be absent from the site, a suitable replacement person shall be appointed, and the Owner/Project Manager / Owner's Representative shall be notified accordingly.

d) Quality assurance & Safety personnel, all of whom shall report directly to Contractor's designated home office managers and not to the Project personnel located at the Site.

e) Contractor shall give first preference for suitable skilled/unskilled local labours who have been affected due to implementation of this Project.

The Contractor shall employ (or cause to be employed) only persons who are careful and appropriately qualified, skilled and experienced in their respective trades or occupations.

The Contractor shall not solicit, recruit, or attempt to recruit, staff and labour from amongst the Owner / Project Manager or Other Contractor personnel during the term of the Contract.

Upon Owner/Project Manager's request, Contractor shall provide Owner/Project Manager with the resumes of, and arrange for the interview by Owner/Project Manager of, any or all personnel described in clauses (a), (b), (c) & (d) of this Section 3.2.1. In addition, Owner/Project Manager will have the right to approve those individuals who will hold the positions described in clauses (a), (b), (c) and (d) of this Section 3.2.1 and any other key

Project personnel employed by Contractor, and Owner/Project Manager will be afforded the opportunity to choose among candidates for the positions of project manager, project engineer and construction manager. Contractor shall not remove any Project personnel described in clauses (a), (b) & (c) and (d), of this Section 3.2.1 or any other individual in a supervisory or lead position without the prior consent of Owner/Project Manager, which consent shall not be unreasonably withheld.

3.2.2 **Removal of Staff and Labour**

The Owner/Project Manager / Owner's Representative may require the Contractor by notice in Writing to remove (or cause to be removed) any person employed on the Site or Works, including the Contractor's Representative, who in the opinion of the Owner/Project Manager / Owner's Representative:

a) Persists in any misconduct,

b) Is incompetent or negligent in the performance of his duties,

c) Fails to conform with any provisions of the Contract;

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

e) Is found to be in intoxicated condition at the Site

f) Any other good and sufficient reasons which could be detrimental to safe and smooth operation of site as solely determined by the Owner/Project Manager or their Representatives.

3.2.3 **Rates of Wages and Conditions of Labour**

Contractor shall ensure that he pays all his personnel and shall ensure and procure that his Sub-contractors pay to their personnel regularly their wages, overtime and other compensations. The attendance register and the wage register shall be submitted to the Owner/Project Manager for verification at regular intervals. The Contractor shall also furnish the Owner/Project Manager at regular intervals as governed by Applicable Laws including local statutes but not less than Monthly intervals, certificates that he has paid to his Sub-contractors and workmen and caused his Sub_Contractors to pay all the dues to his Sub-contractor workmen. In case such payment is not made regularly by the Contractor or his Sub-contractors, the Owner/Project Manager will be in his right to make such payments and deduct the same from the Contractor's progress payments. In case the Owner/Project Manager becomes liable to pay any wages or dues to the labour or to any Government agency under any of the provisions of the Minimum Wages Act, Workmen's Compensation Act or any other Applicable law due to act or omission of the Contractor, the Owner/Project Manager may make such payments and shall recover the same from the Contractor's bills. No labourer below the age of eighteen years shall be employed in the Work.

No price adjustment shall be made on account of changes in minimum wages during contract period including extension period if any.

Any personnel engaged by the Contractor in accordance with and in pursuance of this Contract shall be the direct employee of either the Contractor or Sub-contractors. The Contractor shall be solely liable for and responsible to all such personnel. The Owner shall have no responsibility towards any such personnel and such personnel shall, in no event, be deemed to be the employees of the Owner. Also, the Owner shall have no responsibility towards any Sub-contractor or its personnel and such Sub-contractor or its personnel shall, in no event, be deemed to be the Sub-contractor of the Owner.

3.2.4 **Persons in the Service of Others**

The Contractor or any of its Sub-contractors shall not recruit, solicit or attempt to recruit, its staff and labour from amongst persons in the service of the Owner/Project Manager or Other Contractors and agencies engaged by the Owner/Project Manager or the Owner's Representative during the term of contract and for a period of 1 year following completion or termination of the Contract.

3.2.5 **Labour Laws**

3.2.5.1 Any personnel engaged by the Contractor in accordance with and in pursuance of this Contract shall be the employees / Sub-contractors of the Contractor and the Contractor shall be solely liable for and responsible to such personnel. The Owner/Project Manager shall have no responsibility towards any such personnel and such personnel shall, in no event, be deemed to be the employees or Sub-contractors of the Owner. The Contractor shall comply with and shall ensure that he/his Sub-contractors comply with all the relevant labour laws applicable to his/his Sub-contractors' employees and shall duly pay and afford and cause his Sub-contractors to pay and afford to them all their legal rights. The Contractor shall require all such employees to obey all Applicable Laws and regulations concerning safety at Work.

The Contractor shall be responsible for all labour relation matters relating to the Work and shall at all times use its best efforts to maintain harmony among the personnel employed in connection with the Work whether by the Contractor or his Sub-contractors and shall enter into all necessary labour agreements with such personnel. Contractor and his Sub-contractors shall at all times comply with all Applicable Permits and Applicable Laws relating to employment including but not limited to Contract labour regulations, Workmen Compensation Act, Employee State Insurance and Provident Fund regulations, retrenchment Compensation etc. and labour welfare and use its best efforts and judgement as an experienced Contractor to adopt and implement policies and practices to avoid Work stoppages, slowdowns, disputes, strikes, lockouts and other labour strife and disagreement.

3.2.5.2 The Contractor shall be fully responsible for the due compliance by him and his Sub-contractors with all statutory requirements and with all applicable labour laws including Contract Labour Abolition and Regulation Act, Workmen's Compensation Act, P.F./E.S.I., Labour welfare fund, Act, etc. as may be applicable to the Contractor, the Sub-contractors and their employees. The locations where Allied Manpower Management System (On-line system) has been implemented, the Contractor shall ensure necessary declarations and documents are provided in the system, as per the role of the Contractor envisaged in the system.

The Contractor should get in touch with the local HR/IR/ES&A teams for completion of Statutory compliances before start of the Work. The Contractor should also ensure that he provides correct and complete PF compliance data for a wage month in the format provided by the HR/IR/ES&A teams on or before 15th of the subsequent month, failing which penalty of 1% of the value of the Invoice, per day of delay would be deducted from the Invoice raised. Further, the management will also have a right to suspend the work in case of delay in submitting the PF data.

All other compliances required by HR/IR/ES&A teams should also be provided as per timelines.

The Contractor shall fully indemnify and save harmless the Owner from and against all claims, demands, expenses, losses, liabilities, charges, actions, suits and proceedings whatsoever including claims under aforesaid Acts and laws which may be brought or made against the Owner, its Officers or servants by reason or in consequence of any matter or thing done or omitted or delaying the submission of data by the Contractor and/ or its Sub-contractors and all costs, charges and expenses which may become payable by the Owner in respect thereof."

3.2.5.3 Child labour is strictly prohibited. Contractor shall not engage any labour or employ any personnel below 18 (eighteen) years of age.

3.2.6 **Working Hours**

No work shall be carried out on the Site outside the normal working hours or on the locally recognised Days of rest or local festivals / holidays, unless:

a) Contract so provides after fulfilling Owner / Project Manager's process and procedures for the said working,

b) Work is unavoidable, or necessary for the saving of life or property or for the safety of the Works, in which case the Contractor shall immediately advise the Owner/Project Manager/Owner's Representative,

c) Owner/Project Manager/Owner's Representative gives his consent,

d) Extended working hours/shift working is essential for achieving Project progress/milestones at no extra cost to the Owner/Project Manager.

e) The Contractor is normally expected to work during daytime and is required to complete the work in all respects as stipulated elsewhere. For achieving Project progress/milestones, based on a specific request by the Contractor, Owner/Project Manager/Owner's Representative may consider granting permission for working during the night shifts, if he considers it essential with no extra cost to the Owner/Project Manager. Night work to be carried out only after obtaining necessary clearances and approval of the Owner/Project Manager's Representative.

   Sufficient lights shall be provided by the Contractor to safeguard the workmen and the public and to afford adequate facilities for properly placing and inspecting the material when the night work is in progress. Contractor should be geared and in readiness to carry out extended shifts, including night shift and abide by all statutory and safety requirements in respect thereof.

3.2.7 **Facilities for Staff and Labour**

The Contractor shall provide and maintain all necessary accommodation and welfare facilities for his (and his Sub-contractor's) staff and labour. The Contractor shall also provide the facilities specified in the Contract including specifications, for the Owner/Project Manager's and Owner's Representative's personnel. The Contractor shall not permit any of his or his Sub-contractor's employees to maintain any temporary or permanent living quarters within the structures forming part of the Works or Project Site. Contractor shall make his own arrangements to procure and construct adequate labour housing outside the Project Site and colony battery limits. No areas inside the Owner's land and Project Site shall be used as labour colony. No workers/labourers/supervisors or other Contractor's or Sub-contractor's personnel should be allowed to stay within the Owner's land area after his duty hours. Similarly, no workers/labourers/ supervisors or other Contractor's or Sub-contractor's personnel shall be allowed to enter the Owner's land area before the start of their respective duty time.

3.2.8 **Health and Safety Precautions**

Precautions shall be taken by the Contractor to ensure the health and safety of his and his Sub-contractor's staff and labour. The Contractor shall, in collaboration with and according to the requirements of the local health authorities, ensure that medical staff, first aid facilities, sick bay and ambulance service are available at the accommodation and on the site at all times, and that suitable arrangements are made for all necessary welfare and hygiene requirements and for the prevention of epidemics. The Contractor shall maintain records and make reports concerning health, safety and welfare of Persons, and damage to property, as the Owner's Representative

may reasonably require. Contractor shall be responsible for the medical treatment/hospitalisation of his and his Sub-contractor's staff / labour.

Although the Contractor is responsible and expected to arrange for the first-aid treatment, the Owner/Project Manager may provide first-aid treatment to Contractor's employees as a humanitarian service, post which, the Contractor shall assume full and complete responsibility & liability for all the injuries and damages to its employees/workers/staff/personnel arising out of or allegedly attributable to such first aid. The Contractor shall indemnify and save harmless the Owner/Project Manager against any losses or damages or claims arising out of such first aid treatment or otherwise provided to any of the Contractor employees/workers/staff/personnel.

The Contractor shall appoint a member of his staff at the site to be responsible for maintaining the safety, and protection against accidents, of all personnel on the site. The Contractor shall pay particular attention to ensure safety of his staff and workmen and other persons in the vicinity of the Site and shall be responsible for any loss of life or injury to person due to negligence or any other causes whatsoever except natural causes. He shall provide all necessary fencing and lights required to prevent accidents and shall be bound to bear the expenses of defence of every suit, action or other proceedings at law that may be brought by any person for injury sustained owing to neglect of the above precautions and to pay any damages and costs which may be awarded in any such suit, action or proceedings to any such person or which may with consent of the Contractor be paid to compromise any claim of any such person. Contractor shall comply with the Owner's/Project Manager's Safety Terms & Conditions, Health Safety & Environment Manual with sustainability document which is annexed to the GCC.

Without prejudice to the other provisions contained herein, the Contractor agrees to reinstate all damage of every sort mentioned in this clause so as to deliver the whole of the Contract Works complete and perfect in every respect and so as to make good or otherwise satisfy all claims for damage to the property of third parties.

The Contractor shall take all precautions necessary and shall be responsible for the safety of the work and shall maintain all lights, guards, sign boards, temporary passages, or other protection necessary for the purpose. All work shall be done at the Contractor's risk, and if any loss or damage shall result for fire or from other cause, the Contractor shall promptly repair or replace such loss or damage free from all expenses to the Owner/Project Manager. The Contractor shall be responsible for any loss or damage to material, tools or other articles used or held for use in connection with the work. The work shall be carried on to completion without damage to any work or property of the Owner/Project Manager or of others and without interference with the operation of existing machinery or equipment.

The use of explosives in a manner, which might disturb or endanger the stability, safety, or quality of the works, will not be allowed. Explosives shall be stored, handled and used as prescribed by the law and regulation of the Indian Union, the State in which the work is performed and sub-divisions thereof. Special attention must be given to immediate disposal of paper wrappings from explosives, which are poisonous to livestock.

Technical and safety evaluation of Contractor's Sub-contractor shall be done jointly by Owner/Project Manager.

3.2.9 **Contractor's Superintendence**

The Contractor shall provide all necessary superintendence during the construction, erection and execution of the Works, and as long thereafter as the Owner's Representative may consider necessary for the proper fulfilling of the Contractor's obligations under the Contract. Such superintendence shall be given by the sufficient persons having adequate knowledge 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.

3.3 **Permitting**

3.3.1 **Contractor and Construction Permits**

Contractor shall obtain and maintain, all necessary permits required for the performance of its obligations hereunder, including those required for construction related activities and shall at all times, comply with all the terms and conditions as may be specified in such permits. If Contractor at any time becomes aware, whether as a result of notice from Owner/Project Manager or otherwise, of any applicable permit not obtained by him, Contractor shall promptly give notice thereof to Owner/Project Manager and Contractor shall be responsible for obtaining such Applicable Permit.

The Contractor shall fully indemnify and hold harmless the Owner/Project Manager and all the Owner/Project Manager and their respective shareholders, directors, employees and officials from any losses or damages arising from and out of the Contractor's failure to secure such permits or comply with any terms and conditions stated therein.

3.3.2 **Support to Owner/Project Manager for Permits**

In case Owner/Project Manager is responsible for the permits, Contractor shall provide support to Owner/Project Manager in obtaining all Owner/Project Manager Permits. Such Contractor support shall include:

a) Attendance at meetings with Owner/Project Manager and third parties designated by Owner/Project Manager;

b) Assistance in Preparation of Permit applications or, as applicable, application to transfer permits to the Owner/Project Manager;

c) Assistance in preparation of responses to inquiries by Governmental Instrumentalities / agencies;

d) Assistance in presentations at hearing of Governmental Instrumentalities / agencies, and

e) Provision of all available information and Documents required by Owner/Project Manager in connection with obtaining any Owner/Project Manager Permits;

3.4 **Co-operation**

3.4.1 The Contractor shall, as specified in the Specification, afford all reasonable opportunities for carrying out their respective Work to:

a) Any other contractors employed by the Owner/Project Manager and their workmen,

b) The personnel of the Owner/Project Manager, 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, which the Owner/Project Manager may require to complete the Project.

3.4.2 The Contractor shall not hinder the work of Other Contractors and other sub-contractors of Owner/Project Manager, if any employed by or on behalf of Owner/Project Manager at the Plant Site or the Project Site, to introduce and store Materials in those areas of the Plant Site and the Project Site under Owner/Project Manager's direct control and shall cooperate to help them perform their respective services without hindrance or disruption. The Contractor shall also acknowledge that he works in congruence with requirements of lenders, other contractors,

Project off takers and other related parties, and provide them appropriate information as and when required by them and not act as to harm the interests of any of them.

3.4.3 **Miscellaneous Liabilities in Co-operation with Other Contractors**

The Contractor shall also so arrange to perform his Work as to minimize to the maximum extent possible interference with the work of Other Contractors and their workmen.

Any injury or damage that may be sustained by the employees of the Other Contractors or the Owner/Project Manager, or damage to the works of Owner/Project Manager and/or other contractors due to the Contractor's Work shall promptly be made good at contractor's expense.

The Owner's representative shall determine the resolution of any difference or conflict that may arise between the Contractor and Other Contractors or between the Contractor and the workmen of the Owner/Project Manager in regard to their work.

If the Works of the Contractor is delayed because of any acts or omission of another Contractor, the Contractor shall promptly, however not later than 7 (seven) days from the occurrence of the event, expressly notify in writing to the Owner / Project Manager of such acts of omissions on part of Other Contractors. The Contractor shall have no claim against the Owner/Project Manager on this account other than an extension of time for completing his Works, provided the cumulative effect of such delays does not exceed 60 (sixty) Days. If such delays exceed 60 (sixty) Days, the financial and time implications, if any, shall be mutually discussed, provided that the Contractor had notified the Owner/Project Manager of such acts or omissions of the Other Contractor immediately upon the occurrence thereof. No claim shall be entertained by or against the Owner/Project Manager in the instance the Contractor fails to notify such event within the stipulated time stated above.

The Owner's Representative shall be notified by the Contractor promptly of any defects or delays in the Other Contractor's Works that could affect the Contractor's Works. The Owner's Representative shall determine the corrective measures if any, required to rectify this situation after inspection of the Works and such decisions by the Owner's Representative shall be binding on the Contractor.

The Contractor shall deploy all necessary effective manpower for coordination, expediting and construction supervision required for completion of the works to meet the stipulated quality standards & Project Schedule. In case of deficient performance of the Contractor in this regard is observed by the Owner / Project Manager, the same shall be brought out to the notice of the Contractor in writing. In case Contractor fails to remedy the performance, Owner/Project Manager will rectify the same by deployment of his own resources and the cost of the same shall be recovered from the Contractor, whether by set off against amounts payable to the Contractor under the Contract or directly, to be decided at the sole discretion of the Owner.

Should the works be suspended by reason of strike/riots by Contractor's own employees or any other cause whatsoever which relates solely to the Contractor or the Contractor's Sub-contractors and/or their respective employees and personnel Contractor shall take all precautions necessary for the protection of work and make good, at his expense, any damage arising from any of these causes and shall indemnify the Owner for any delays arising on account thereof.

3.5 **Construction Facilities, Construction Power, Construction Water Facilities, Sanitary Facilities, Telecommunication Facilities, Mail Service, Catering, Start-up Spares and Consumables**

3.5.1 During the Contract Period, the Contractor shall arrange and pay for construction fuel necessary for the performance of the Work. Contractor shall arrange and pay for lubricants, chemicals, and

other consumables in sufficient quantities, and the disposal of sewage and Other Contractor and Sub-contractor generated wastes, as necessary, to enable Contractor and each Sub-contractor to perform the Work until Take-over of the Works.

3.5.2 **Construction Power Supplies**

Unless specifically agreed by the Owner otherwise, the Contractor shall arrange and pay for Construction Power necessary for the performance of the Work till the Take-over of the Relevant Package. Construction power if arranged by the Owner may be made available at the proposed Site as available within the plant boundary at one point and the Contractor shall make his own arrangements for further distribution & metering. The Contractor shall be responsible for the maintenance of its distribution system. The Contractor shall be responsible for payment of energy bills at prevailing/agreed rates of such Construction Power till issue of Certificate of Final Acceptance. The Construction Power system by its design and nature shall be a temporary system and not part of the permanent power supply.

Contractor shall be responsible for making its own assessment of the quantum of Construction Power required and shall furnish the information in accordance with Technical Specifications. The Contractor acknowledges that electricity sourced from an Electricity Distribution Licensee in that area through the Owner's network / DISCOM may be subject to disturbances, and its interruption or non-availability for any reason shall not constitute a condition for claim of extra time or costs on part of Contractor. The Contractor shall make adequate provision for D.G. sets as a stand-by power source for all the activities/process, which requires uninterrupted power.

No variation in Contract Price and no extension of time shall be admissible on account of any non-availability / non-reliability of Construction Power whether supplied by the Owner or arranged by the Contractor.

3.5.3 **Construction and Drinking Water Facilities**

The Contractor shall be responsible for procuring water required for construction and other performance of its obligations under the Contract. However, if feasible, construction water may be provided by Owner/Project Manager at its sole discretion on a chargeable basis at a single location within battery limit. Metering and further distribution to various consumption points will be done by Contractor at its own cost.

Cost of all connected Works such as, but not limited to, pumps, pipeline, ground water reservoir etc are to be borne by the Contractor.

If required by the Owner/Project Manager, the Contractor will provide water supply and where required potable water also to the Owner/Project Manager's facilities at the Project Site and the Owner/Project Manager shall pay for the same accordingly. If construction water is provided by the Owner/Project Manager, the same will be provided at one point within plant boundary on chargeable basis. Metering and further distribution will be provided by the Contractor at his cost.

Drinking water shall be provided by Contractor for its Employees/Workmen at its own cost.

No variation in Contract Price and no extension of time shall be admissible on account of any non-availability of Construction Water whether supplied by the Owner or arranged by the Contractor.

3.5.4 **Sanitary Facilities**

Adequate sanitary facilities for the use of persons employed by the Contractor at the construction Site shall be provided and maintained by the Contractor to the extent and in such manner and at such places as shall be acceptable to the Owner/Project Manager. Separate Toilet facilities for both gents and ladies shall be provided.

Contractor shall make all temporary arrangements for the treatment and discharge of sewage and drainage from or in connection with the construction and Work Site and shall maintain the same to the satisfaction of the Owner/Project Manager as long as they may be required. All sanitary waste shall be treated in accordance with the Applicable law including applicable local regulations.

In this regard, Contractor shall prohibit the committing of nuisance on the site or upon the land of the Owner/Project Manager or of adjacent landowners and any employee of Contractors or its Sub-contractors found violating this provision shall be liable to immediate dismissal.

3.5.5 **Canteen Facilities**

The Contractor shall arrange for catering services for their staff and workers deployed on the project Site. Costs of catering services towards the Owner/Project Manager/ Owner's Representative's Site staff would be borne by the Owner/Project Manager / Owner's Representative if services are availed.

3.5.6 **Mail Service**

A central mailing office shall be established and manned by the Contractor on the site where personal and business mail may be collected and delivered.

3.6 **Access: Office Accommodations**

Contractor shall provide Owner/Project Manager and its engineers (including the Owner/Project Manager / Owner's Representative and the Financing Parties) with reasonable access to Contractor's home office and Contractor's offices at the Site and at all design, engineering, fabrication, construction and other premises of Contractor and its Sub-contractors where activities relating to Works is carried on at all times upon reasonable prior notice, including access to design, engineering, fabrication, and testing, construction facilities, Drawings, Documents sufficient to permit Owner/Project Manager/Owner's representatives to inspect Work being performed and to monitor compliance by Contractor and the Sub-contractors with the terms of the Contract and directions of Contractor.

Contractor shall provide to Owner/Project Manager/ Owner's representatives as and when required appropriate office facility at the home office of Contractor.

3.7 **Clean-Up and Waste Disposal**

3.7.1 The Contractor shall be responsible for keeping the entire area allocated to him clean and free from accumulation of waste Materials, rubbish/debris/etc. at all times during the period of Contract.

The Contractor shall employ enough number of specialised personnel to thoroughly clean his Work area at least once a Day and dispose of the rubbish. All such rubbish and scrap material shall be scrapped or disposed in a place to be identified by the Owner's Representative.

Materials and stores shall be so arranged as to permit easy cleaning of the area. In areas where equipment might drip oil and cause damage to the floor surface a suitable protective cover of flame resistant, oil proof sheet shall be provided to protect the floor from such damage. Also, spillage of oil and its soaking into soil shall be prevented. In case garbage are found disposed in areas other than allotted to the contractor, then the same shall be cleared by the Owner/Project Manager and the charges debited to the concerned Contractor.

Contractor's labour camp and housing colony shall be maintained to the good standards of hygiene and shall be kept reasonably free of debris, litter and mal odour.

Similarly the labour colony, offices and residential areas of Contractor's employees and workmen shall be kept clean and neat to the entire satisfaction of the Owner's Representative. Proper sanitary arrangements shall be provided by the Contractor in the Work areas, office and residential areas of the Contractor.

The Contractor shall cause all Sub-contractors, at all times to keep the Site reasonably clean and otherwise free from accumulation of waste materials, rubbish, other debris resulting from performance of the Work. In case Owner/Project Manager is not satisfied regarding Contractor's or its Sub-contractor's cleanliness at Site, Owner/Project Manager will notify regarding the same to the Contractor. In case of non-improvement / satisfaction, Owner/Project Manager will get the site cleaned and the charges of the same will be debited to Contractor's account / deducted from Contractor's dues / payments.

3.7.2 All soil, filth or other matter of an offensive nature taken out of any excavation, trench, sewer, drain, cesspool etc shall not be deposited on the surface, but shall at once be carted away by the Contractor to some pit or place suitably arranged by him away from the site of work and approved by local authorities.

3.7.3 As a part of the work included in this Contract, the Contractor shall completely remove and satisfactorily dispose of all temporary works to the extent directed. He shall tear down and dispose off all temporary buildings, shall remove or grade, to the extent directed, all embankments or coffer dams made for construction purposes shall remove all plant and equipment, shall satisfactorily dispose of all rubbish resulting from the operations under this Contract and shall do all work necessary to restore the territory embraced within the site of his operations to at least as good order and conditions as at the beginning of the work under this Contract.

3.7.4 The Contractor shall comply with the all the statutes / guidelines of Ministry of Environment & Climate Change (MoEF&CC), Central Pollution Control Board (CPCB), State Pollution Control Board (SPCB), local municipal / panchayat authorities including the Solid Waste Management Notification dated 29th March 2016 (published in Gazette of India, Part II, Section 3, Subsection (ii)) by MoEF&CC and any further latest notifications thereon at its own cost.

3.8 **Reporting Requirements**

3.8.1 Contractor shall deliver to Owner/Project Manager/ Owner's Representative a computer-based PERT / Network Schedule in hard copy as well as a soft of Primavera (XER format) / any other mutually agreed electronic format during the Kick-off Meeting in accordance with the Contract.

3.8.2 Progress scheduling report shall be provided by the Contractor to the Owner/Project Manager in accordance with the Contract including, but not limited to, requirements indicated in the Specification. Contractor shall be responsible for,

a) Ensuring that performance of the Work proceeds in accordance with the network Schedule and

b) Co-ordinating the activities of all Sub-contractors.

Contractor to have / arrange Video Conferencing facility at his HO & manufacturing plants and Project Site for Project status reviews / discussions.

Contractor and his Sub-contractors will comply & follow the online document management systems requirements of the Owner / Project Manager.

3.8.3 **Daily Diary and Progress Reports**

A daily diary register will be kept in the Owner/Project Manager's office. The Contractor will supply all detailed information every day at 9.00 hours for the day preceding and the diary will be jointly signed by the Owner/Project Manager/ Owner's Representative and the Contractor's representatives, every day in token of its correctness. A works instruction book, serially numbered will also be kept in the Owner/Project Manager's office and all day-to-day instructions will be given in that book. The Contractor's representative shall report everyday to see these instructions and sign them at the bottom in token of his having seen them.

The Contractor shall supply all information regarding procurement of materials and progress of construction work, as is required by the Engineer for compiling the weekly progress reports. This information shall be supplied by 9.00 hours on every Monday, for the preceding week.

The Contractor shall furnish the Engineer with two levels of report (Weekly & Monthly) as per the format as approved by Owner/Project Manager.

Apart from this the Contractor is required to submit a daily report of the skilled labour and plant, equipment and other resources deployed by him at the Project Site. This shall include the resources of the Sub-contractor if any.

3.9 **Schedule**

3.9.1 Time is the essence of this contract. The Contractor shall, within one week of receipt of the Letter of Intent submit to the Owner for his approval, a detailed work schedule adhering to the timeline as stated in Special Conditions of Contract, before starting the Work to achieve completion schedule both interim and ultimate. After the Owner has agreed with the schedule, the Contractor shall prepare detailed program of each work front/activity breaking it down giving daily quantifiable/measure of progress. The schedules are to be reviewed periodically with the Owner to ensure that the completion date will be met or to institute corrective steps (at no extra cost to the Owner) to adhere to the completion dates. The Owner reserves the right to revise the schedule at his discretion in order ensure completion within the completion date and to suit the Project requirement and such alterations shall not entitle the Contractor to any extra payment. The Contractor shall provide to the Owner/Project Manager for approval within the time stated in clause 3.8.1 the programme for the execution of the contract, showing (a) the sequence and timing of activities by which the contractor proposes to carry out the work and (b) the times by which the Contractor requires the Owner/Project Manager to furnish any Owner/Project Manager's inputs as set forth in the specifications, which as and when approved shall form the Schedule.

3.9.2 Without prejudice and in addition to the foregoing the Contractor shall prepare and furnish to Owner/Project Manager updated monthly schedules of the Work to be performed, including a critical path schedule.

3.9.3 Not Used.

3.9.4 The Schedule that is updated on a Monthly basis shall be done from the basic schedules which together with the updated monthly Schedule shall be available in a computer system to which the Owner/Project Manager/Owner's Representative will have access to facilitate the Owner/Project Manager to review the various levels to independently analyse the relevant information. This, however, does not take away the responsibility of the Contractor to fulfil all his obligations under the Contract, including informing the Owner/Project Manager/Owner's Representative about the delays as also the expected delays and the actual plans to overcome such delays.

3.9.5 Contractor shall arrange for the mobilisation of all equipment, material, personnel and all other resources to progress the work at the site to suit the completion dates of the Works. No financial, time extension or other claims for idling or under-utilisation of Contractor's resources will be entertained or paid by Owner unless certified by Owner's Engineer.

3.9.6 Contractor shall identify suitable quarries for uninterrupted supply of coarse and fine aggregates and sources of all other construction materials and make necessary arrangements for transportation of the same at its own cost. If quarries and sources of other materials are located faraway, Contractor shall at all times have reserve storage of all the construction materials so as not to affect the required rate of progress.

3.10 **Taxes, Duties and Levies (As Applicable)**

Unless specifically mentioned in the Special Conditions of Contract, Contractor shall not assume any duty concessions / exemptions of any nature whatsoever and shall consider all Taxes, Duties and Levies at the full rate without any concessions while submitting the Price Bid and all Taxes, Duties and Levies shall be deemed to be included in the Contract Price at the applicable full rate without any exemption or concessions. Owner shall not be liable to provide any document for availing any exemption or concessions on Taxes, Duties and Levies.

In case the Project / Relevant Package is conceived under any special taxation scheme (e.g. Deemed Export Benefit (FTP) of Government of India / International Competitive Bidding Process / Mega Power Project / Renewable Projects etc.), the same shall be specifically stated under Special Conditions of Contract. In such cases, the Contractor shall obtain/consider all the tax exemptions as applicable under Govt. of India / State Govt. (Project Authority /Essentiality Certificate) while submitting the Price Bid.

3.10.1 **Taxes to the Contractor's Account**

i) The Contract Price as mentioned in the Schedule of Quantities mentioned elsewhere in the Contract are inclusive of applicable taxes including BOCW, CGST, SGST, IGST, Customs Duty, royalties and/or any other duty/tax levied by Central, State Governments, local bodies or other public bodies. The tax components (CGST, SGST, IGST etc.) shall be shown separately in price breakup.

ii) The agreed rates and price shall be deemed to include all materials, labour, plant & equipment and everything necessary to satisfactorily the agreed contract Works, rates shall also include for everything in the Technical Specifications & all activities/things required to complete the particular item. The rates shall be firm till the tenancy of Contract and shall not be subject to escalation on any ground whatsoever. The Contractor when called for by the Owner/Project Manager shall furnish detailed analysis in support of the rates quoted by him against each item of the Contract. The Owner/Project Manager reserves the right to utilise the analysis thus supplied in settling any deviations or claims arising out of this Contract.

iii) Except as otherwise specifically provided in the Contract irrespective of the mode of Contracting, the Contractor shall bear and pay all taxes, duties, levies, charges, interest and penalties and the like levied and /or assessed on the Contractor, its Sub-contractors, or their employees, by all municipal, local bodies, state or national government authorities or any other Government Instrumentality in connection with the Works.

iv) The Contractor, hereby agrees to indemnify and keep indemnified and saved harmless at all times the Owner/Project Manager against any loss, Cost, expenses or damages suffered or incurred by it, by reason of its failure to pay taxes, duties, etc which it is obliged to pay pursuant to the provisions of this clause and / or arising out of its failure to comply with its obligations under this clause.

v) The Owner/Project Manager shall recover from the Contractor and / or adjust from the Contract Price all taxes, duties, levies, charges, interest and penalties and the like leviable and / or assessable on the Contractor, its Sub-contractors or their employees but levied and / or assessed on the Owner/Project Manager as a representative assessee / agent of the Contractor, its Sub-contractors or their employees, by all municipal, local, state or national

government authorities or any other Government Instrumentality in connection with the Work.

vi) Further the Owner/Project Manager shall recover from the Contractor and / or adjust from the Contract Price, simple interest at State Bank of India Marginal cost of fund-based lending rate(SBI MCLR) for a tenure of 1 year from the date of payment of all taxes, duties, levies, charges, interest and penalties and the like leviable and / or assessable on the Contractor, its Sub-contractors or their employees but levied and / or assessable on the Owner/Project Manager as a representative assessee / agent of the Contractor, its Sub-contractors or their employees, by all municipal, local, state or national government authorities or any other Government Instrumentality in connection with the Work.

3.10.2 **Variation in Tax or Applicable Taxes or Introduction of New Taxes**

i) Any statutory variation in rate of applicable Indian taxes, duties, levies etc., any variation in applicable taxes or interpretation/enforcement of the same or introduction of new taxes or the introduction/amendment of any exemptions (other than Direct taxes i.e. Income Tax, corporate tax etc), levied in India, starting from 2 (two) Days prior to the Closing Date for submission of Bid but within the Guaranteed Completion Date of Works, shall be to the account of the Owner/Project Manager. Such adjustment shall be limited to direct transactions between the Owner/Project Manager and the Contractor and no amounts shall be payable on account of variation on taxes, duties and levies between the Contractor and its sub vendors/Sub-contractors/suppliers.

ii) Any statutory variation on account of aforementioned factors shall be reimbursed by Owner/Project Manager to Contractor or by the Contractor to the Owner/Project Manager, as the case may be, against submission of documentary evidence in support thereof. However, in case of delay, from the originally prepared network Schedule, Schedule and Guaranteed Completion Dates as may be relevant for the computation thereof, due to reasons not attributable to the Owner/Project Manager, any statutory variation adverse to the Owner/Project Manager over and above those specified under "Schedule of Quantity and Rates" as given elsewhere in the Contract, including any taxes during the delayed period shall be to the Contractor's account and the Owner/Project Manager shall not be liable for the same in any manner whatsoever.

iii) The Contractor is obligated to keep the Owner/Project Manager/Owner's Representative notified of the aforesaid statutory variations within 15 (fifteen) days of such variation coming into effect.

iv) The Contract Price and other prices given in the "Schedule of Prices" are based on the applicable tariff as indicated by the Contractor in the Schedule of Prices. In case this information subsequently proves wrong, incorrect or misleading, the Owner/Project Manager shall have no liability to reimburse/pay to the Contractor the excess taxes, fees etc; if any finally levied/imposed under the statutes except as provided in this clause. However, if the taxes/fee levied/imposed are lower than the amount indicated in the Schedule of Prices, the Owner/Project Manager shall be entitled to recover the difference from the Contractor.

v) Anti-Profiteering Clause: Notwithstanding anything contained in the Contract, in the event of introduction of any new legislation or any change or amendment or enforcement of any Act or Law, or any change in the interpretation by the Supreme Court of India of any said Act or law, rules or regulations of Government of India or State Government(s) or Public Body which becomes effective after the Bid Submission Due Date up to the FAC, if any, which results in any decrease in the cost of the Works / Relevant Package through reduced liability of taxes & duties, increase in the input tax credits, Contractor shall pass on the benefits of such reduced cost, taxes or duties to Owner, to the extent which is directly attributable to

such introduction of new legislation or change or amendment as mentioned above as per Anti-profiteering Rules, 2017, hereby, "Tax" or "tax" shall include taxes, duties, levies, cess and similar imposts by whatever name called whether in the nature of indirect tax or direct taxes and whether or not imposed by the central government, state government, local or municipal authority or any other statutory body.

vi) The Contractor shall comply with all the requirements prescribed in the GST Acts (including Central and State Acts) in respect of the activities/ supplies made by them under this Agreement/ Contract to enable Owner to avail input tax credits on timely basis.

vii) The Contractor shall comply with all the requirements prescribed in the BOCW Act (The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996) pay the applicable BOCW cess at its own cost on timely basis and submit the compliance document to the Owner / Project Manager for their verification.

viii) All central / state / local indirect taxes, duties, levies or cess etc. even if not stated explicitly in the Price Schedule but applicable on the supplies / services delivered under the Contract shall be deemed to be part of the Contract Price and not payable separately. The Contractor shall comply with and pay all such central / state / local indirect taxes, duties, levies or cess etc. The Contractor shall be responsible for any loss of tax credit or any other costs including interest, penalty, etc. that may be levied or recovered by the statutory authorities from the Owner in the instance of default of obligations under this Section.

3.10.3 The tax invoices shall contain the details to comply with the GST Law. The Contractor shall,

i) Furnish (electronically) and communicate to the Owner, the details of Goods or Services supplied by the 10th of the month succeeding the said tax period,

ii) Upon discovery of any discrepancy, rectify it and shall pay the tax and interest thereof,

iii) Furnish the returns (electronically), for the inward and outward supplies of Goods and/or Services, before the specified dates as per the GST Law,

iv) Communicate the tax paid, credits etc. as and when credited.

v) The Invoice should clearly state the description of the goods, quantity, sale price, tax %, and tax amount;

vi) The Invoice should be signed by an Authorized Signatory.

Bills/Invoices in the name of The Tata Power Company Ltd. with packing lists in triplicate shall be forwarded along with the equipment.

Contractor to furnish GST Registration number in all invoices as well as Owner's GST number.

3.10.4 In case any taxable service is provided by any Contractor who is a non-resident or who does not have an office in India, then contractor shall undertake to appoint a representative in India. The Contractor shall pay the required amount of GST to this representative who in turn shall affect the payment of the tax to appropriate authority. Owner/Project Manager will not take any responsibility to pay GST.

On the basis of documentary proof of such payment of tax, the Owner/Project Manager would be entitled to declare the particulars thereof in his GST return.

The agreed rates against items in Schedule of Price shall be deemed to be inclusive of GST for such taxable service provided by the Contractor who is a non-resident or who does not have an office in India. The Owner/Project Manager will not pay any extra cost towards GST..

3.10.5 **Withholding taxes**

The Owner/Project Manager shall pay, out of the Contract Price, any withholding tax charged by any Government Instrumentality including the Government of India or any Indian State Government on the Contract or the performance of the Work pursuant to or under the Contract. The Owner/Project Manager shall furnish to the Contractor appropriate documentation / certificates/ challans evidencing payment of any such withholding tax.

Should any tax benefit accrue to the Contractor in Country of the Contractor / or Owner/Project Manager by way of deduction as expenses or as tax credit or otherwise against its tax liability, or on account of any taxes paid in India by the Owner/Project Manager pursuant to the Contract or any Applicable Law on account of this Contract, the Contractor shall forthwith pay the same to the Owner/Project Manager. The Contractor agrees and undertakes to furnish to the Owner/Project Manager every year till the end of the period during which the Contractor is entitled to any tax benefit in India or elsewhere pursuant to this clause or completion of its tax assessment whichever, is later, a certificate from its independent Auditors or an independent certified public accountant acceptable to the Owner/Project Manager, the quantum of such tax benefit, if any, and basis for arriving at such tax benefits.

3.10.6 **Benefit of credit for tax**

For tax, levy, duty concessions Owner/Project Manager will initiate necessary applications & the procedures and will expedite the documentation / certification required in time for availing the benefits. In case of unforeseen delays from the approving authorities, contractors shall manage the implications and will carry out necessary documentation / submissions to avail these benefits at a later date once the Owner/Project Manager is in receipt of the required certificate.

If, as a result of any agreement, whether existing or modified or signed in future on avoidance of double taxation between the Government of India and the Government of the Contractor's Country or under any law, any tax benefit shall accrue to the Contractor in Country of the Contractor or by way of deduction as expenses or as tax credit or refund or otherwise against its tax liability or on account of taxes, which are paid in India by the Owner/Project Manager pursuant to this Contract, the benefit of such credit, deduction as expense or refund along with details shall be passed on to the Owner/Project Manager within 15 (fifteen) days of the receipt of such credit / refund/deduction as expense or otherwise by the Contractor/expatriate. The Contractor/its expatriates shall take immediate and appropriate action for obtaining the admissible credit or refund from such Country's authorities and payment of the same to the Owner/Project Manager. The Contractor shall at all times keep the Owner/Project Manager informed about the same.

The Contractor shall furnish on an annual basis, a certificate from an independent Chartered Accountant confirming:

a) The amount of credit or refund or deduction as expense or otherwise that may be due, if any, to it on account of tax paid by the Owner/Project Manager in India in respect of payments under the Contract to the Contractor; and

b) Amount of credit or refund that may be obtained or deduction as expense that may be permissible, if any, during the relevant period.

No such annual certificate is required with regards to expatriates' tax credit or refund. However, the Contractor will inform the Owner/Project Manager of all such credits or refunds obtained by its expatriates as aforesaid.

3.11 **Security & Safety Rules of Owner**

3.11.1 The site is a protected place and entry to the site is restricted. No person shall be employed or allowed on the site without the prior permission in writing from the Owner. All persons employed or allowed at the site shall at all times conform to all regulations laid down by the Owner.

3.11.2 The Contractor shall strictly follow Security Instructions of the Project Site and maintain proper control on movement of his men/materials. He shall implement the procedures for entry token/passes at his cost as required. He will record entry of all incoming materials, as no materials, which are returnable, will be permitted to be removed if not recorded at the time of entry. Contractor shall strictly abide by the rules and regulations of security and safety enforced by the Owner. Contractor shall provide proper identity cards, badges, etc., to its personnel and to its Sub-contractors and their personnel whenever directed by the Owner. Contractor shall be solely responsible for the safety and security of its personnel and equipment. Contractor shall indemnify and hold Owner/Project Manager harmless from time to time from and against any all losses, claims, suits, proceedings, taxes, penalties, liability, damages, costs and expenses, suffered or incurred, arising out of or in connection with any bodily injury caused to the representatives/employee of the Contractor or any other third party.

3.11.3 Contractor shall do all things necessary or expedient to protect any and all parallel, converging and intersecting electric lines and poles, highways, access or other roads, bridges, waterways, railroads, sewer lines, natural gas pipelines, drainage ditches, culverts, fences, walls, and water lines, power or communication cables or lines and any and all physical property of others, from damage resulting directly or indirectly from performance of the Work. Without limiting the generality of the foregoing, Contractor shall maintain the access roads to the Site and all access roads within the Site, in good repair and passable at all times as well as proper drainage system. In the event that any such physical property is damaged or destroyed in the course of the performance of the Work, Contractor at his cost shall rebuild, restore or replace such damaged or destroyed physical property to full satisfaction of Owner/Project Manager and shall fully indemnify and hold the Owner / Project Manager harmless from time to time and against any all losses, claims, suits, proceedings, taxes, penalties, liability, damages, costs and expenses, suffered or incurred, arising out of or in connection with the performance of the Work, whether directly or indirectly.

3.11.4 Contractor shall provide, and shall ensure that its Sub-contractors provide, proper and ample protection from damage or loss to the Works/other packages, the Site, equipment and construction equipment during its performance of the Work.

3.11.5 In the event that any of the Works are damaged or destroyed for any reason prior to acceptance of such work, Contractor shall rebuild, restore or replace the works or such items, subject to and in accordance with the Contract including Specifications. All costs irrespective of reimbursement of claims from Insurance shall be to Contractor's account.

3.11.6 Contractor shall adopt all safety measures/provide necessary protection to already constructed foundation/structures irrespective of the sequence of construction.

3.12 **Royalties and License Fees**

3.12.1 Contractor shall pay all required royalties and license fees with respect to proprietary rights, intellectual property licenses and agreements, and shall procure, as required, the appropriate proprietary rights, intellectual property licenses and agreements, for Materials, methods, processes, systems and Services incorporated into the Relevant Package or the Project or otherwise relating to the performance of the Work and thereafter for the purpose of operation & maintenance of the Works. Contractor should possess the valid license for the technology used in India by such Contractor from their principals/ technology providers. Contractor shall also arrange backup guarantees from their principals/ technology providers as required by the Owner/Project Manager, to demonstrate the Contractor's legal rights to use such intellectual property.

3.13 **Standard for Supplies and Performance**

3.13.1 Without limiting any other provision of Contract including Specifications, Contractor shall perform the Work and cause his Sub-contractors to perform their Work hereunder in accordance with Good Construction Practices and standards of professional care, skill, diligence and competence generally accepted in the construction industry applicable to construction & project management practices for Structures of similar size and type as the Works.

3.14 **Fire Protection**

3.14.1 The Work procedures that have to be used during the construction / erection shall be those, which minimize fire hazards to the extent practicable. Combustion materials, combustible waste and rubbish shall be collected and removed from the Site at least once each Day. Fuels, oils and volatile of flammable Materials shall be stored away from the construction and equipment and material storage areas in safe containers. Untreated canvas, paper, plastic or other flammable flexible Materials shall not at all be used at Site for any other purpose unless otherwise specified. If any such Materials are received with the equipment at Site, the same shall be removed and replaced with acceptable material before moving into the construction or storage area.

3.14.2 Similarly corrugated paper fabricated cartons, etc. will not be permitted in the construction area either for storage or for handling of Materials. All such Materials used shall be of waterproof and flame-resistant type.

All other Materials such as working Drawings, plans, etc. which are combustible but are essential for the Works to be executed shall be protected against combustion resulting from welding sparks, cutting flames and other similar fire sources.

3.14.3 All the Contractor's supervisory personnel and sufficient number of workers shall be trained for firefighting and shall be assigned specific fire protection duties. Enough of such trained personnel must be available at the Site during the entire period of the Contract.

3.14.4 The Contractor shall provide enough fire protection equipment of the types and in enough numbers for the ware-houses, office, temporary appropriate structures, labour colony area, etc. Access to such fire protection equipment, shall be easy and be kept open at all times.

3.14.5 In the event of occurrence of fire being attributable in the opinion of the Owner / Project Manager to the contractors' negligence no extension of time will be granted.

3.15 **Contractor's Equipment and Owner/Project Manager's rights thereof**

3.15.1 All equipment provided by the contractor & his Sub-contractors shall be certified, tested & valid by the competent Person. The Contractor shall provide all Contractor's equipment necessary to perform the Work and complete the Works. All Contractors' equipment shall, when brought on to the Site, be deemed to be exclusively intended for the execution of the Works and performance of Services. The Contractor shall not remove from the Site any such Contractor's Equipment without the consent of the Owner/Project Manager / Owner's Representative. The Contractor shall nevertheless be solely liable and responsible for any loss or destruction thereof and damage thereto.

3.15.2 The Owner/Project Manager shall have lien on such goods for any sum or sums, which may at any time, be due or owing to him by the Contractor, under, in respect of or by reasons of the Contract. After giving a fifteen (15) Days' Notice in Writing of his intention to do so, the Owner/Project Manager shall be at liberty to sell and dispose of any such goods, in such manner as he shall think fit including public auction or private treaty and to apply the proceeds in or towards the satisfaction of such sum or sums due as aforesaid.

3.16 **Access Route to & at site**

The Contractor shall be deemed to have satisfied himself as to the suitability and availability of the access routes to the Site that he chooses to use. The Contractor shall (as between the Parties) be responsible for the maintenance of access routes. The Contractor shall provide any signs or directions, which he may consider necessary for the guidance of his staff, labour and others. The Contractor shall obtain any permission that may be required from the relevant authorities for the use of such routes, signs and directions.

The Owner/Project Manager will not be responsible for any claims which may arise from the use or otherwise of any access route. The Owner/Project Manager does not guarantee the suitability or availability of any particular access route, and will not entertain any claim and shall not be liable for any non-suitability or non-availability for continuous use during construction of any such route.

3.17 **Insurance**

Contractor shall obtain and maintain all insurance required to be obtained by Contractor as per the Contract and as per statutory requirements including clause 4.0 hereof.

3.18 **Maintenance of Schedule and Milestone Schedule**

If Contractor is not performing the Work at a rate which will maintain the Schedule or the Milestone Schedule, Contractor shall at its own expense shall cause Contractor's personnel, to work such overtime and furnish such additional personnel and construction equipment and resources as may be required to comply with the Schedule or the Milestone Schedule (as the case may be).

3.19 **Work and Safety Regulations**

3.19.1 The Contractor shall ensure proper safety of all the workmen, Materials and equipment belonging to him or to Owner/Project Manager or to others, working at the Site. The Contractor shall also be responsible for provision of all safety notices and safety equipment required both by the relevant legislations and the Owner's Representative, as he may deem necessary.

3.19.2 The Contractor shall notify well in advance to the Owner's Representative of his intention to bring to the Site Container filled with liquid or gaseous fuel or explosive or petroleum substance or such chemicals, which may involve hazards. The Owner's Representative shall have the right but not the obligation to prescribe the conditions, under which such container is to be stored, handled and used during the performance of the Work and the Contractor shall strictly adhere to and comply with such instructions.

3.19.3 The Owner's Representative shall have the right but not obligation at his sole discretion to inspect any such container or such construction plant/equipment for which Material in the Container is required to be used and if in his opinion, its use is not safe, he may forbid its use. No claim due to such prohibition shall be entertained by the Owner/Project Manager and the Owner/Project Manager shall not entertain any claim of the Contractor towards additional safety provisions / conditions to be provided for / constructed as per Owner's Representative's Instructions.

3.19.4 Wherever it is necessary to provide and / or store petroleum products or petroleum mixtures and explosives, the Contractor shall be responsible for carrying out such provision and / or storage in accordance with the rules and regulations laid down in Petroleum Act 1934, Explosives Act 1948, and Petroleum and Carbide of Calcium Manual Published by the Chief Inspector of Explosives of India as well as other relevant and Applicable Laws, rules and regulations. All such storage shall have prior approval of the Owner's Representative. In case, any approvals are necessary from the Chief Inspector (Explosives) or any statutory authorities, the Contractor shall be responsible for

obtaining the same. Notwithstanding anything contained herein, the Contractor shall not store any petroleum products or petroleum mixtures or any other explosive material in the Site for a period in excess of 7 days, without the prior written consent of the Owner's Representative.

3.19.5 All equipment used in construction and erection by Contractor or his Sub-contractors shall meet Indian and International Standards of safety and where such standards do not exist, the Contractor shall ensure these to be absolutely safe. All equipment shall be strictly operated and maintained by the Contractor or his Sub-contractors in accordance with Manufacturer's operation manual and safety instructions and as per Guidelines and Rules of the Owner/Project Manager in this regard.

3.19.6 Periodical Examinations and all Tests for all lifting/hoisting equipment and tackles shall be carried out in accordance with the relevant provisions of Factories Act 1948, Indian Electricity Act 2003 and all relevant Law/Rules in force from time to time. A register of such examinations and Test shall be properly maintained by the Contractor and will be promptly produced as and when desired by Owner's Representative or by the Person authorised by him.

3.19.7 Not Used

3.19.8 The Contractor shall provide suitable safety equipment of prescribed standard to all employees and workmen according to the need, as may be directed by Owner's Representative who will also have right to examine these safety equipment to determine their suitability, reliability, acceptability and adaptability.

3.19.9 Where explosives are to be used, the same shall be used under the direct control and supervision of an expert, experienced, qualified and competent Person strictly in accordance with the Code of Practices/Rules framed under relevant laws, rules and regulations not restricted to Indian Explosives Act pertaining to handling, storage and use of explosives.

3.19.10 The Contractor shall provide safe working conditions to all workmen and employees at the Site including safe means of access, railings, stairs, ladders, scaffoldings, etc. The scaffoldings shall be erected under the control and supervision of and experienced and competent Person. For erection, good and standard quality of material only shall be used by the Contractor.

3.19.11 The Contractor or his Sub-contractors shall not interfere or disturb electric fuses, wiring and other electrical equipment belonging to the Owner/Project Manager or other Contractors under any circumstance, whatsoever, unless expressly permitted in Writing by the Owner/Project Manager to handle such fuses, wiring or electrical equipment.

3.19.12 Before the Contractor or his Sub-contractors connects any electrical appliances to any plug or socket belonging to the other Contractor or Owner/Project Manager, he shall:

a) Satisfy the Owner's Representative that the appliance is in good working condition

b) Inform the Owner's Representative of the maximum current rating, voltage and phases of the appliances

c) Obtain permission of the Owner's Representative detailing the sockets to which the appliance may be connected.

3.19.13 The Owner's Representative will not grant permission to connect until he is satisfied that:

a) The appliance is in good condition and fitted with a suitable plug.

b) The appliance is fitted with a suitable cable having two earth conductors, one of which shall be an earthed metal sheath surrounding the cores.

3.19.14 No electric cable used by the other Contractor/Owner/Project Manager will be disturbed without prior permission. No weight of any description will be imposed on any cable and no ladder or similar equipment will rest against or attached to it.

3.19.15 No repair work shall be carried out on any live equipment. The equipment shall/must be declared safe by Owner's Representative and a permit to Work shall be issued by Owner's Representative before any repair work is carried out by the Contractor or his Sub-contractors. While working on electric lines/equipment whether live or dead, suitable type and sufficient quantity of tools will have to be provided by Contractor or his Sub-contractors to electricians/workmen/officers.

3.19.16 The Contractor shall employ necessary number of qualified, full time Electricians/Electrical Supervisors to maintain his temporary electrical installations.

3.19.17 The Contractor employing more workmen than specified under Factories Act 1948 whether temporary, casual, probationer, regular or permanent or on Contract, shall employ at least required numbers of full time officers exclusively as Safety Officer to supervise the safety aspects of the equipment and workmen who will coordinate with the Project Safety Officer and Owner's Representative. In case of Work being carried out through Sub-contractors, the Sub-contractor's workmen/employees will also be considered as the Contractor's workmen/employees for above purpose.

3.19.18 The name and address of such Safety Officers of Contractor will be promptly informed in Writing to Owner's Representative with a copy to Safety officer-in-charge before he starts Work or immediately after any change of the incumbent is made during currency of the Contract.

3.19.19 In case any accident occurs during the construction/ erection or other associated activities undertaken by the Contractor thereby causing any minor, major or fatal injuries to his employees due to any reason, whatsoever, it shall be the responsibility of the Contractor to promptly inform the same to the Owner's Representative in prescribed form and also to all the authorities envisaged under the Applicable Laws.

3.19.20 The Owner's Representative shall have the right at his sole discretion to stop the Work, if in his opinion the Work is being carried out in such a way that it may cause accidents and endanger the safety of the persons and/or property, and/or equipment. In such cases, the Contractor shall be informed in Writing about the nature of hazards and possible injury/accident and he shall comply with the instructions of the Owner's Representative including removal of shortcomings promptly. The Contractor after stopping the specific Work, can, if felt necessary, appeal against the order of stoppage of Work within 3 (three) Days of such stoppage of Work and Owner/Project Manager's decision in this respect shall be conclusive and binding on the Contractor.

3.19.21 The Contractor shall not be entitled for any damages/compensation for stoppage of Work due to safety reasons as provided in clause 3.19.19 above and the period of such stoppage of Work will not be taken as an extension of time for completion of Work and will not be the ground for waiver of levy of Liquidated Damages.

3.19.22 The Contractor and his Sub-contractors shall follow and comply with all Safety Rules, relevant provisions of Applicable Laws pertaining to safety of workmen, employees, Works and equipment as may be prescribed from time to time without any demur, protest or contest or reservation.

3.19.23 **Training of work force deployed by the Contractor / its Sub-contractors at TPSDI:**

Tata Power has established state-of-the-art vocational / skills development training facilities at its major facilities like Trombay, Shahad (near Mumbai), Mundra, Maithon etc. under the entity The Tata Power Skill Development Institute (TPSDI) as a Corporate Social Responsibility endeavour to

empower youth and others with employable skills, especially in the Power and allied sectors, and to address the skill gap challenge faced by the Indian Power Sector.

The TPSDI program is in congruity with the National Skill Quality Framework (NSQF). The TPSDI Competency Framework allows participants to swiftly pick up readily deployable skills and continue upgrading their skills after convenient intervals over a period of time. The trainings are offered by TPSDI at nominal charges published time to time.

In order to improve work safety and to ensure that all work force deployed at Owner premises have the right orientation / induction and skills training before they undertake any work, Contractor shall ensure all workforce employed by Contractor / his Sub-contractors are TPSDI qualified in work safety and their respective skills / crafts as detailed out in the Tata Power Safety Terms & Conditions annexed to this GCC.

3.20 **Employee Identification, Project Site Security and Protection of Project Site**

3.20.1 Contractor shall provide a method which shall be subject to the reasonable approval of Owner/Project Manager, of checking the employees of Contractor, the Sub-contractors, Owner/Project Manager and Owner's/Project Manager's other suppliers and Contractors in and out of the areas in which the Work is to be performed under the Contract.

3.20.2 Contractor's employees shall wear identification badges provided by the Owner's Representative while on Work at Site.

3.20.3 Contractor shall at all times be responsible for the security of the Works and the Site at all times and the Goods therein while the Work is being performed or Goods are being supplied up to the earliest of:

a) Take-over and issuance of provisional Acceptance Certificate

b) The transfer of care, custody and control of the Works as a whole to Owner /Project Manager with the concurrence of the Owner/Project Manager, or

c) Termination of the Contract.

3.20.4 Contractor shall do all things necessary or expedient to protect any and all parallel, converging and intersecting electric lines and poles, highways, access or other roads, bridges, waterways, railroads, sewer lines, natural gas pipelines, drainage ditches, culverts, fences, walls, and water lines, power or communication cables or lines and any and all physical property of others, from damage resulting directly or indirectly from performance of the Work or in supply and transport of Goods. Without limiting the generality of the foregoing, Contractor shall maintain the access roads to the Site and all access roads within the Site in good condition and passable at all times as well as proper drainage system. In the event that any such physical property is damaged or destroyed in the course of the performance of the Work or in supply and transport of Goods, Contractor at his cost shall rebuild, restore or replace such damaged or destroyed physical property to full satisfaction of Owner/Project Manager.

3.20.5 Contractor shall provide, and shall ensure that its Sub-contractors provide, proper and ample protection from damage or loss to the Relevant Package, the Site, equipment and construction equipment during its performance of the Work.

3.20.6 In the event that any of the Relevant Package or Works or Facility or any other assets, equipment or material of Other Contractor or any third parties are damaged or destroyed for any reason prior to acceptance and Final take-over of such Relevant Package or Works, Contractor shall rebuild, restore or replace the Relevant Package/Works so as to deliver the Relevant Package complete in all respect and shall build, restore or replace all such other damaged or destroyed items, subject to and in accordance with the Contract of the Facility or of the third parties back to their original

state prior to the event or otherwise satisfy all claims for damages of third parties.. All costs irrespective of reimbursement of claims from Insurance shall be to Contractor's account.

3.21 **Safety Programme and Policy**

3.21.1 The Contractor shall strictly comply with the Owner's Contractor Safety Policy and Safety Terms and Conditions. Any misconduct and/or violations with respect to the Owner's Contractor Safety Policy and Safety Terms and Conditions or any other legal and statutory provisions pertaining to Safety, Health and Environment shall be dealt with as per the Safety Terms and Conditions. Contractor shall, and shall cause all Sub-contractors to, implement and administer a safety program for the Relevant Package, subject to the approval of the Owner/Project Manager (which shall not be unreasonably withheld), which shall include:

a) Development of a safety manual (the "Safety Manual") establishing safety guidelines and requirements for Contractor, Sub-contractor (including a fall prevention program). Copies of this manual shall be provided to Owner/Project Manager and Owner's Representative immediately upon its development and Contractor shall incorporate into such Safety Manual any and all reasonable comments of Owner/Project Manager;

b) Conducting of weekly safety meetings with the employees and agents of Owner/Project Manager, Contractor, Sub-contractor and Owner's other Contractors and their Sub-contractors;

c) Development, implementation and enforcement of procedures for advising employees and agents of Owner/Project Manager, Contractor, Sub-contractor and Owner's other Contractors and their Sub-contractors of, and correction of, safety violations and deficiencies;

d) Taking of all other actions necessary to provide a safe Work environment in accordance with Applicable Laws and Applicable Permits. Contractor shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to avoid damage, injury or loss to:

   i) All persons employed by the Owner/Project Manager, Contractor and its Sub-contractors and Owner's other Contractors and their Sub-contractors in connection with the Work or supply of Goods or Owner/Project Manager and its Contractors and Sub-contractors (whether in the performance of their obligations under the Contract or otherwise) and all other persons who may be affected by the performance of the Work or supply of Goods or any of such persons.

   ii) All supplies used in connection with the Relevant Package and all equipment to be incorporated into the Relevant Package, whether in storage on or off the Site under the care, custody or control of Owner/Project Manager, Contractor, any Sub-contractor or Owner's other Contractors and their Sub-contractors.

e) At all times (including during Commissioning, start-up, testing and Initial Operation, and Tests before Take-over including Performance Tests) Contractor shall require all Sub-contractors working on or supplying equipment or construction equipment to the Site to comply with all safety requirements in effect at all such times and of all Applicable Laws and Applicable Permits. Contractor shall, and shall cause the Sub-contractors to, comply with all Applicable Laws and Applicable Permits.

3.21.2 Contractor shall submit list of tools & tackles with details of make, year of manufacturing, valid certification to the Owner/Project Manager's Representative for approval.

Owner/Project Manager may during the execution of the Relevant Package inspect & verify that the tools & tackles are as per the qualification requirements approved by him and will have right

to seek replacements in case of any discrepancies. The Contractor shall always comply with such directives.

3.22 **Protection of the Environment:**

3.22.1 The Contractor shall take all reasonable care and actions to protect the environment both on and off the Site and to limit the damage and nuisance to people and property resulting from pollution, noise and other results of his operations.

The Contractor shall ensure that emissions, surface discharges and effluent from the Contractor's activities shall not exceed the values prescribed by Applicable Laws and the values as indicated in the Technical Specifications.

3.22.2 The Contractor shall be required to ensure that there shall be no cutting of trees by him or his labourers or their family members and he will be solely responsible for their acts in this regard. The Contractor shall try to maintain ecological balance by preventing deforestation, water pollution and defacing of natural landscape in the vicinity of work areas. The Contractor shall so conduct his construction operations as to prevent any unnecessary destruction of, scarring or defacing the natural surroundings in the vicinity of the work area. In order to maintain the ecological balance, the Contractor shall specifically observe the following instructions:

a) Where unnecessary destruction, scarring, damage or defacing may occur as a result of the Contractor's operation, the same shall be repaired, replanted or otherwise corrected at the Contractor's expense. The Contractor will prevent scattering of rocks and other debris outside the work areas. All work areas shall be smoothed and graded in a manner to conform to the natural appearance of the landscape as directed by the Engineer.

b) All trees and shrubs which are not specifically required to be cleared or removed for construction purposes shall be preserved and protected from any damage that may be caused by the Contractor's construction operation and equipment. The removal of trees or shrubs will be permitted only after prior approval by the Owner / Project Manager. Special care shall be exercised where trees or shrubs are exposed to injuries by construction equipment, blasting, excavating, dumping, chemical damage or other operation and the Contractor shall adequately protect such trees by use of protective barriers or other methods approved by the Owner/Project Manager. Trees shall not be used for anchorage.

c) The Contractor's construction activities shall be performed by methods that will prevent entrance or accidental spillage of solid matter contaminants, debris and other objectionable pollutants and wastage into the river/water bodies. Pollutants and wastes shall be disposed of in a manner and at sites approved by the Owner/Project Manager. The Contractor shall fully comply with Water (Prevention and Control of Pollution) Act 1974- Section 33 (A) including any further latest notifications thereon.

d) In the conduct of construction activities and operation of construction equipment, the Contractor shall utilize such practicable methods and devices as are reasonably available to control, prevent and otherwise minimize air pollution. The Contractor shall fully comply with Air (Prevention and Control of Pollution) Act, 1981 – Section 31(A) including any further latest notifications thereon.

e) Burning of materials resulting from clearing of tree, bush, combustible construction materials and rubbish shall not be allowed and shall be disposed in environmentally friendly manner.

f) The Contractor shall be required to prevent flowing of debris and muck into the river/water bodies. Necessary restricting structures like walls/crates etc. shall be constructed for the purpose. Before handing over the Site to the Owner/Project Manager at the end of construction, the Contractor shall also stabilize the muck fully i.e. consolidation and compaction of the muck shall be carried out in the muck dump sites.

g) All the construction equipment which are likely to generate high noise levels are to be fully equipped (with noise reduction measures) to meet the ambient noise control standards.

All costs related to preservation and maintenance of the environment at Site shall be deemed to have been included in the Contract Price.

3.22.3 The Contractor shall indemnify and hold the Employer harmless against and from all claims, damages, losses and expenses (including legal fees and expenses) resulting from the consequences of any failure by the Contractor to comply with the provisions of the clause 3.22.

3.23 **Affirmative Action:**

The Owner recognizes that diversity in the workplace positively impacts business. The Owner commits itself in helping people from SC/ST background either by helping them to become entrepreneurs or by engaging workforce from SC/ST community under the contracts agreed herein. To encourage engaging SC/ST community, the Owner may agree to incentivise the Contractor by paying additional 1% of the contract value, if the number of SC/ST workforce engaged in the contract exceeds 30% of the total deployed strength and 2%, if the strength goes beyond 50%, however, subject to a maximum incentive of INR 5 million on this account. While the Contractor will assist the workforce so engaged to become self-reliant in meeting the work expectation, the Owner will also volunteer its training resources to the extent possible to improve their employability.

The Contractor shall maintain the proper documentation of such category of the workforce engaged and the owner shall pay the incentive after its verification.

3.24 **DRAWINGS AND SCHEDULE OF QUANTITIES**

3.24.1 One set of the drawings and specifications and schedule of quantities shall be furnished by the Owner/Project Manager to the Contractor, and Owner/Project Manager shall furnish, within such time as he may consider reasonable, one copy of any additional drawing/s which in his opinion may be necessary for the execution of any part of the work. Such copies shall be kept on the works and the Owner/Project Manager and their representatives shall at all reasonable times have access to the same, and they shall be returned to the Owner/Project Manager by the Contractor before the issue of the certificate for the balance of his account under the Contract. This contract and the signed drawings and specifications and schedule of quantities shall remain in the custody, of the Owner/Project Manager, and shall be produced by him at his office as and when required by the Owner/Project Manager or by the Contractor.

3.24.2 Owner shall also supply construction drawings and details progressively during the contract period, to cover all the works envisaged in the scope of the contract. Construction drawings would be issued at the commencement of the work and subsequently to ensure that progress is maintained at the required pace, to meet the agreed work schedule of completion provided design data are available. If the Contractor apprehends any delay in construction for want of drawings and details, he shall, immediately advice the Owner/Project Manager in writing accordingly. In case the work is retarded or even stopped temporarily for lack of details and construction drawings to proceed with, the Contractor would be given extension of time to the

extent his work has been held up for want of drawings. The Owner/Project Manager's decision in regard to the extension of time allowed on this account shall be final and binding.

3.24.3 Only figured dimensions on drawings will be followed and drawings to large scale shall generally take precedence over those to a smaller scale. Detailed drawings and notes appended thereon shall be deemed to form part of the specifications and to supersede the specification in case of discrepancies. However, all documents shall be considered mutually explanatory.

3.24.4 Contractor shall prepare and submit detailed fabrication drawings based on the drawings and/or instructions furnished by Owner for structural steel and works which require further detailing for successful execution of works. Owner's Engineer shall review and comment such detailed drawings submitted by Contractor. Contractor will have to re-submit the commented drawings till the Owner approves the drawings as fit for fabrication / construction. Contractor must note that it is his responsibility to timely submit and obtain Owner's approval on the fabrication / detailed drawings without affecting the Project progress and schedule. The Contractor must submit and adhere to fabrication / detailed drawing schedule in accordance with the Project requirements and to the Owner's satisfaction as would be decided during the kick-off meeting with him.

3.25 **MEASUREMENT OF WORKS**

3.25.1 The Owner/Project Manager/ Owner's representative may from time to time intimate to the Contractor that they require the works to be measured and the Contractor shall attend or send a qualified agent to assist the Owner/Project Manager and Owner's representative in taking such measurements and calculations and to furnish all particulars or to give all assistance required by either of them.

3.25.2 Should the Contractor not attend or neglect or omit to send such agents then the measurements taken by the Owner/Project Manager/ Owner's representative or approved by them shall be taken to be the correct measurements of the work. Such measurements shall be taken in accordance with the Mode of Measurements mentioned in the specification.

3.25.3 Any claim which the Contractor may have to make in respect of such measurement shall be made by him in writing to the Owner/Project Manager within seven days of the date of these measurements, failing which the measurements shall be deemed to have been accepted by the Contractor.

3.25.4 Where mode of measurement is not specified, the measurements will be taken at site as per I.S. Code of Practice for Measurements. The Contractor shall give all assistance for taking measurements like steel measuring tapes, scaffolds, ladder and including surveyors with surveying instruments for checking and confirming levels.

3.26 **SCHEDULE OF QUANTITIES - NO CLAIM BECAUSE ACTUAL QUANTITIES DIFFER FROM PRELIMINARY STATEMENT**

3.26.1 The quantities of the various kinds of work to be done and materials to be furnished under this Contract which have been estimated and are set forth in the proposal or the Agreement or the Schedule of Quantities and Rates are the best available, but may not be accurate in any or all particulars and are only for the purpose of comparing on a uniform basis the bids offered for the work under this Contract

3.26.2 The Contractor agrees that neither the Owner/Project Manager nor the Engineer nor any of the employees or agents thereof shall be held responsible if any of the said estimated quantities should be found to be not even approximately correct in the construction of the work and that he will not at any time dispute or complain of such statement nor assert that there was any

misunderstanding in regard to the character, size and type of work to be done or the kind or amount of the materials to be furnished or work to be done. Further, the Contractor shall make no claim for anticipated profits, for loss of profit or for damage because of a difference between the quantities of the various kinds of work to be done or materials actually delivered and the estimated quantities set forth by the Owner/Project Manager or the Engineer

3.26.3 The rates/prices quoted by the Contractor in the schedule of rates/prices shall be firm irrespective of any variation in the quantities of individual items of work and/or in the total Contract Price unless otherwise specified in Special Conditions of Contract.

3.27 **CONTRACTOR INFORMED, AS TO THE CONDITIONS**

3.27.1 The Contractor shall inspect, examine and obtain all information and satisfy himself regarding all matters and things such as right of way, surface and sub-surface water conditions to be encountered, the character of equipment and facilities needed for the prosecution of work; the location and suitability of all construction materials, the quantities of various sections of the work, and local labour conditions, relating to the execution and maintenance of the works to be carried out under the Contract or any hindrances or interference's to or with construction and maintenance of the works from any cause whatsoever including any other operation of works, which may or will be carried out on or adjacent to the site of the works under the Contract and shall make allowance for all such contingencies in the Contract Price and will not raise any claims or objections against the Owner/Project Manager in any of such matters as mentioned above.

3.27.2 The acceptance of the order or making of a Contract will be construed as evidence that such an examination was made and later claims for labour, equipment or materials required for difficulties encountered will not be allowed.

3.27.3 Any record of subsurface condition, water records and other observations which may have been made by the Owner/Project Manager or the Engineer have been made with reasonable care and accuracy. Such records may be made available to the Contractor for his information, if available, but there is no expressed or implied guarantee, as to the accuracy of the records nor any interpretation of them. The Contractor shall recognise this and form his own opinion of the character of the materials to be encountered or excavated, from an inspection of the ground and put his own interpretation on records.

3.27.4 The prices quoted by the Contractor shall be based on his own knowledge and judgement of the conditions and hazards involved and not upon any representation of the Owner/Project Manager or the Engineer.

3.28 **CONTRACTOR TO PROVIDE EVERYTHING NECESSARY**

3.28.1 The Contractor shall provide everything necessary for the proper execution of the Works according to the intent and meaning of the drawings, schedule of quantities and specifications taken together whether the same may or may not be particularly shown or described therein provided that the same can reasonably be inferred there from and if the Contractor finds any discrepancy therein shall immediately and in writing refer the same to the Engineer whose decision shall be final and binding on the parties.

3.28.2 The Contractor shall supply, fix and maintain at his cost, during the execution of any works all the necessary cantering, scaffolding, staging, planking, timbering, strutting, shoring, pumping, fencing, hoarding, watching and lighting by night as well as by day, etc required not only for the proper execution and protection of the Works, but also for the protection of the public and the safety of any adjacent roads, streets, cellars, vaults, walls, houses, buildings and all other erections, matters or things, and the Contractor shall take out and remove any or all such

cantering, scaffolding, staging, planking, timbering, strutting, shoring etc. as occasion shall require or when ordered to do so and shall fully reinstate and make good all matters and things disturbed during the execution of the works to the satisfaction of the Engineer. The Contractor shall be paid no additional amount for the above and for any access roads to be made to reach the construction site.

3.28.3 All materials shall be new and of the best respective kinds described in the schedule of quantities and/or Technical Specifications and in accordance with the Engineer's Instructions and the Contractor shall upon the request of the Engineer, furnish him with all invoices, accounts, receipts, certificates and other vouchers, to prove that the materials comply therewith. The Contractor shall at his own cost arrange for and/or carry out any test of materials which the Engineer may require. The contractor shall establish and operate a full-fledged cement and concrete testing laboratory at site and depute a full-time qualified QA/QC engineer for the duration of the contract at no extra cost to the Owner/Project Manager. Such full-fledged cement and concrete testing laboratory at the site shall be as per provision of IS:456 and Contractor shall also depute an independent qualified QA/QC engineer full-time at the site for the duration of the contract.

3.28.4 It shall be the responsibility of the Contractor to unload and store in a safe and acceptable manner all construction materials as directed by the Owner/Project Manager.

3.28.5 The Contractor is required to provide and maintain all tools, and equipment and instruments necessary to perform his work. He shall provide all fuels, lubricants and compressed air for the operation and maintenance of his construction tools.

3.28.6 The Contractor is to arrange for all his requirements of such materials including but not limited to oxygen, Acetylene, pipes, ropes, welding rods etc required for performing the Works.

3.28.7 Samples of all materials to be used, whether cement, steel, bricks, rubble stone, aggregate, sand, timber, tiles, granite, finishing & building interior etc. shall be submitted by the Contractor and must be got approved by the Owner/Project Manager before they are used. Approved samples shall be kept with the Owner/Project Manager and all supplies shall strictly conform to the approved samples. Materials not strictly conforming to the samples are liable to the rejected.

3.28.8 The Contractor shall not sell, assign, mortgage, hypothecate or remove equipment or materials which have been installed or which may be necessary for the completion of the Contract without the written consent of the Owner/Project Manager.

3.28.9 Contractor shall provide and maintain at the site necessary number and type of machinery and equipment including survey instruments, TOTAL Station, Auto level etc. in good working condition for proper setting out and timely completion of the various works covered under Relevant Package. All arrangements for transporting the equipment to and from the site shall be done by the Contractor at his own expense. Contractor has to provide all the survey equipment including all technicians, helpers etc., for checking other works also if so desired by Owner with no additional cost of the Owner. No claim shall be entertained for mobilising additional equipment and/or personnel to complete the work within the stipulated time.

3.28.10 Contractor shall provide all fuels and lubricants required for the operation and maintenance of construction machinery and equipment as well as his transport vehicles.

3.28.11 Contractor shall at his cost arrange for all his requirements of such materials as, but not limited to, oxygen, acetylene, welding electrodes, ropes, form ties, turn-buckles, clamps, wiping rags and sandpapers etc. which are required to satisfactorily perform his work.

3.28.12 It shall be ensured by the Contractor that work shall proceed uninterrupted even in the event of power failures with the help of DG Sets and Diesel compressors. As such, adequate number of

diesel operated machinery (such as boring rigs, concrete mixers, vibrators, welding sets, etc.) shall be provided by the Contractor as an alternative arrangement in case electrically operated machinery are proposed to be brought to site.

3.28.13 The Contractor will be required to provide at his own cost all facilities for his office, warehouse, tool room, change room or any other building/structure required to the Works.

3.28.14 Contractor shall establish his own office / shed at specified place inside/near the Project site for his worker/staff. The Contractor's office/shed shall be porta-cabin type. Only the shed for storing Cement shall be in brick masonry. In addition the office/shed shall have proper ventilation lighting and sanitary facilities. Contractor shall plan their site facilities and obtain clearance from the Owner before construction of the Office/shed.

3.28.15 All royalties shall be paid by the Contractor as also all tolls, local and other taxes, etc. at no extra cost to Owner. The rates quoted for excavation shall include Collector's permissions for Excavation permits, Royalty payments, disposal at the local / state / central pollution control board approved yard etc.

3.28.16 All materials supplied by the Contractor shall be of the best quality and shall conform to the Technical Specification. Approval in writing shall be obtained from Owner before any alternative or equivalent material is proposed to be used by the Contractor.

3.28.17 The Contractor shall get tested all materials supplied by him in a Owner approved laboratory, as directed by Engineer or as specified in the corresponding code of practice, at no extra cost to the Owner. This is in addition to furnishing the Manufacturer's Test Certificate where available.

3.28.18 Contractor shall obtain all necessary permits and licenses before commencement of work at no extra cost to Owner.

3.28.19 The Contractor shall have PF coverage, for all workmen in his permanent employee as well as those temporarily hired by him for the said Project. He shall also have ESIC cover for all workmen, permanent as well as temporary if required by law. The cost for both the above viz. PF as well as ESIC shall be deemed to have been covered in the rate quoted by contractor. The Owner shall not pay any extra charges over and above the rates quoted for these statutory payments.

3.28.20 Ash shall be utilized in Civil Works to the extent possible without affecting the quality and engineering requirements. Vendor shall declare Ash utilization Quantity or Percentage of ash used in allied civil works. Wherever available, ash shall be made free of cost at point of generation for the purpose by Owner. The usage of ash for the purpose shall be approved by Engineer-in-charge / Order Manager.

3.29 **TO DEFINE TERMS AND EXPLAIN PLANS**

3.29.1 The various parts of the Contract are intended to be complementary to each other, but should any discrepancy appear, or any misunderstanding arise as to the import of anything contained therein, the explanation of the Owner/Project Manager shall be final and binding. The correction of any errors or omissions of the drawings and specifications may be made by the Owner/Project Manager, when such correction is necessary to bring out clearly the intention, which is indicated by a reasonable interpretation of the drawings and specifications as a whole.

3.29.2 The Owner/Project Manager may from time to time prepare for his own use estimates of quantities or bills of materials required for the work. Copies of such estimate or bills of materials which may be given to the Contractor for his convenience, or any lists, weights, or quantities of materials or structures which may appear on the drawings shall not be considered as finally correct, sufficiently complete, or accurately covering any portion or all the work to be done under this Contract. Such bills or estimates may be carefully assembled and prepared, but their accuracy

is not guaranteed. They may or may not be accurate as to any particular detail and are given only as the best information available at the time of issue of the information. It is mutually understood that any such lists or estimates are furnished to the Contractor for his convenience only and not as lists or estimates of work to be done, many necessary items of work being omitted.

3.30 **ENGINEER TO DIRECT WORK AND ORDER ALTERATIONS, MODIFICATIONS, DELETIONS**

3.30.1 The Owner/Project Manager shall have the right but not obligation to direct the manner in which all work under this Contract shall be conducted in so far as may be necessary to secure the safe and proper progress and the specified quality of the work, and all work shall be done and all material shall be furnished to the satisfaction and approval of the Owner/Project Manager.

3.30.2 Additional drawings and explanations to exhibit or illustrate details may be provided by the Owner/Project Manager and shall be so provided whenever necessary and shall be binding upon the Contractor. The written decision of the Owner/Project Manager as to the true interpretation and meaning of the drawings and specifications and of such additional drawings and explanations shall be binding upon the Contractor.

3.30.3 If at any time the Contractor's methods, materials, or equipment appear to the Owner/Project Manager to be unsafe, inefficient or inadequate for securing the safety of the workmen or the public, the quality of work or the rate of progress required, he may order the Contractor to increase their safety, efficiency and adequacy, and the Contractor shall comply with such orders. If at any time the Contractor's working force and equipment are, in the opinion of the Engineer, inadequate for securing the necessary progress, as herein stipulated, the Contractor shall, if so directed, increase the working force and equipment to such an extent as to give reasonable assurance of compliance with the schedule of completion. The failure of the Owner/Project Manager to make such demands shall not relieve the Contractor of his obligations to secure the quality, the safe conducting of the work, and the rate of progress required by the Contract, and the Contractor alone shall be and remain liable and responsible for the safety, efficiency, and adequacy of his methods, materials, working force, equipment and timely completion of job irrespective of whether or not he makes any change as a result of any order or orders received from the Owner/Project Manager.

3.30.4 The Owner/Project Manager shall have the power to make any alteration in, omissions from additions to the original specifications, drawings, designs and instructions that may appear to him to be necessary or advisable during the progress of the work and the Contractor shall be bound to carry out the work in accordance with any instructions that may be given to him in writing by the Owner/Project Manager and such alterations, omissions, additions or substitutions shall not invalidate the Contract. Any altered, additional or substituted work which the Contractor may be directed to do in the manner above specified as part of the work, shall be carried out by the Contractor on the same conditions in all respects on which he agreed to do the main work and at the same rates as are specified in the Contract for the main work, unless such alterations are not identical with items of work and form extra items.

3.30.5 The time for completion of the work shall be extended in the time proportion that the altered, additional or substituted work bears to the original contract and the decision of the Owner/Project Manager shall be conclusive and binding on the Contractor.

3.31 **CONTRACTOR'S SUPERVISION**

3.31.1 The Contractor shall, during the whole time the work is in progress, employ a qualified engineer to be in-charge of the works with adequate experience in handing of jobs of this nature and with the prior approval of the Owner/Project Manager. Such engineer shall be constantly in attendance at the site during working hours. During Contractor's representative's absence during working hours, when it may be necessary to give directions and orders by the Owner/Project

Manager or the Engineer, such orders shall be received and obeyed by the Contractor's engineer in-charge who may have charge of the particular part of the work in reference to which orders are given.

If requested to do so, the Owner/Project Manager or the Engineer shall confirm such orders in writing. Any directions, instructions or notices given by the Owner/Project Manager or the Engineer to Contractor's engineer-in-charge shall be deemed to have been given to the Contractor. Such engineer in-charge of Contractor shall have all necessary powers to engage labour or purchase materials and proceed with the work as required for speedy execution in accordance with the Contract.

Apart from the above, a separate and independent planning and monitoring cell of adequate and suitable back-up in the form of computers and project management software (Primavera preferred) shall also be available at site full time. This cell shall prepare overall and detailed construction programmes and submit weekly / fortnightly / monthly progress and hold-up reports.

3.31.2 None of the Contractor's Superintendents, engineers, supervisors or labour should be withdrawn from the work without due notice being given to the Owner/Project Manager or the Engineer; further no such withdrawals shall be made if in the opinion of the Owner/Project Manager or the Engineer such withdrawals will jeopardise the required pace of progress/successful completion of the work.

3.31.3 The Contractor shall employ in or about execution of the work only such persons as are careful, skilled and experienced in their respective trades, and the Owner/Project Manager shall be at liberty to object to and require the Contractor to remove any person employed by the Contractor in or about execution of works who in the opinion of the Engineer misconducts himself or is incompetent or negligent in the proper performance of his duties and all such persons shall not again be employed upon the works without the prior permission of the Owner/Project Manager.

3.31.4 Neither the Contractor, the Owner/Project Manager nor the Engineer shall hire or employ any employee of the other party except by mutual consent.

3.32 **SETTING OUT WORKS**

3.32.1 The Contractor shall set out the works and shall be responsible for the true and perfect setting out of the same and for the correctness of the positions, levels, dimensions and alignment of all parts thereof. If at any time, any error shall appear during the progress of any part of the work, the Contractor shall at his own expenses rectify such error, if called upon, to the satisfaction of the Owner/Project Manager.

3.32.2 The Contractor shall establish and maintain base lines and benchmarks adjacent of the various sections of work. All such marks and stakes must be carefully preserved by the Contractor, and in case of their destruction by him or any of his employees, they will be replaced at the Contractor's expense.

3.32.3 The Contractor shall be responsible for the accuracy of all dimensions within the various sections of the work according to the figures of dimensions on the drawings.

3.33 **CONSTRUCTION SUPERVISION AND WORKMANSHIP**

3.33.1 The Owner/Project Manager will engage his own supervisory staff at the site of works as may be deemed fit. The Contractor shall afford the supervisors every facility and assistance for examining the works and materials for checking and measuring the works and materials. The supervisors shall have no power to revoke, alter, enlarge or relax any requirement of the Contractor, but may

sanction any day work, additions, alterations, deviations or omissions, or any extra work whatever as may be authorised by the Owner/Project Manager.

3.33.2 The Supervisors engaged by Owner/Project Manager will act Engineer's representatives and shall have power to give notice to the Contractor or to his Foreman of non-approval of any work or materials, and such work shall be suspended or the use of such material shall be discontinued, until the decision of the Engineer is obtained.

3.33.3 The work shall be conducted under the general direction of the Engineer and is subject to inspection by his supervisors to ensure strict compliance with the terms of the Contract. No failure of the Engineer or his supervisors during the progress of the work to discover or to reject materials, or work not in accordance with the requirement of this Contract shall be deemed as acceptance thereof or a waiver of defects therein and no payment by the Engineer on partial or entire occupancy of the premises shall be construed to be an acceptance of the work or materials which are not strictly in accordance with the requirements of this Contract. No changes whatsoever to any provision of the specifications shall be made without written authorisation of the Owner/Project Manager.

3.33.4 The Contractor shall execute the whole and every part of the work in the most substantial and workman-like manner as regards material and in all other respects.

3.33.5 If it shall appear to the Owner/Project Manager or the Engineer that any work has been executed with unsound, imperfect or unskilled workmanship, or that any materials or articles provided by him for the execution of the work are unsound, or of a quality inferior to that contracted for, or otherwise not in accordance with the Contract, the Contractor shall on demand in writing from the Owner/Project Manager or the Engineer, notwithstanding that the same may have been inadvertently passed, certified and paid for, forthwith rectify or remove and reconstruct such work in whole or in part as the case may require or as the case may be, remove such materials or articles at his own proper charge and cost. In the event of his failing to do so within seven days of receipt of the Engineer's written notice thereof, or any other period mentioned in such notice, the Engineer may rectify or remove and re-execute the work or remove and replace with other materials and articles complained of, as the case may be, at the risk and expense of the Contractor in all respects.

Also in the event the Contractor fails to carry out the rectification within the period stipulated above, the Contractor shall be liable to pay compensation at the rate of quarter (1/4) percent of the total Contract Value, for every week or part thereof, beyond the period stipulated above, that the rectification work remain incomplete.

3.33.6 The provisional acceptance of sections of the work for the purpose of preparing partial estimates and the payment of money for such partial estimates shall not operate as a waiver of any portion of this Contract and shall not be construed so as to prevent the Engineer from requiring replacement of defective work that may become apparent after the said provisional acceptance and shall not be construed in any way as the basis for a claim of extra compensation for any cause whatsoever by the Contractor.

3.34 **UNFIXED MATERIALS WHEN TAKEN INTO ACCOUNT TO BE THE PROPERTY OF OWNER/PROJECT MANAGER**

3.34.1 Wherein any certificate, of which the Contractor has received payment, the Engineer has included the value of any unfixed materials intended for and/or placed on or adjacent to the works, such materials shall become the property of the Owner/Project Manager (for any loss or damage to materials the Contractor shall be responsible) and they shall not be removed from the site, except for the works, without the written authority of the Owner/Project Manager.

3.35 **INTOXICANTS**

3.35.1 The Contractor shall not permit or suffer the introduction or use of intoxicating liquor upon the works embraced in this Contract, or upon any of the ground occupied or controlled by him.

3.36 **WORK IN MONSOON AND DEWATERING**

3.36.1 The construction and erection work may entail working in monsoon also. The Contractor must maintain a minimum labour force as may be required for the job and plan and execute the construction and erection according to the prescribed schedule. No extra rate will be considered for such work in monsoon.

3.36.2 During monsoon and other period it shall be the responsibility of the Contractor to keep the construction site free from accumulating of water, at his own cost.

3.36.3 During inclement weather, rains, Contractor shall suspend concreting for such time as the Engineer may direct and shall protect from damage all works already in progress or completed just then. All such temporary protective measures shall be at Contractor's cost and any damage to works shall be made good by the Contractor at his own expense. Upon resumption with Engineer's consent/notice, Contractor shall make good any deterioration or defect in or loss of the Works or Materials, which has occurred during the suspension.

3.37 **HOLD HARMLESS CLAUSE**

3.37.1 The Contractor shall be fully responsible for the due compliance by him and his Sub-contractors with all statutory requirements and with all applicable labour laws including Contract Labour Abolition and Regulation Act, Workmen's Compensation Act, P.F./E.S.I., Labour welfare fund, Act as may be applicable to the Contractor, the Sub-contractors and their employees. The Contractor shall fully indemnify and save harmless the Owner/Project Manager from and against all claims, demands, expenses, losses, liabilities, charges, actions, suits and proceedings whatsoever including claims under aforesaid Acts and laws which may be brought or made against the Owner/Project Manager, its Officers or servants by reason or in consequence of any matter or thing done or omitted to be done by the Contractor and/ or the Sub-contractors and all costs, charges and expenses which may become payable by the Owner/Project Manager in respect thereof.

3.38 **DEMOBILISATION**

3.38.1 Upon completion of work, the Contractor shall promptly demobilise from the site and leave the place in a manner as directed by the Owner/Project Manager or the Engineer, including cleaning of the area. Contractor shall start demobilisation only after the successful completion of the contract. No equipment, plant material or personnel shall be de-mobilised from the site unless with the express consent of the Owner's Project Manager. The Owner reserves the right to disallow in de-mobilisation if works under this scope of this contract are not completed to his satisfaction.

4.0 INSURANCE

4.1 **Rented Equipment**

All construction equipment shall be brought to and kept at the Site at the sole cost, risk and expense of Contractor, and Owner/Project Manager shall not be liable for any loss or damage thereto, except to the extent any such loss or damage is caused solely by the Owner/Project Manager. Contractor shall maintain adequate, appropriate and prudent insurance with respect to such construction equipment.

Any Insurance policy carried by the Contractor, any Sub-contractor or any third party on or in respect of any construction equipment shall provide for waiver of the underwriter's right to subrogation against Owner/Project Manager, the Financing parties, their assignees, subsidiaries, parent companies, affiliates, employees, insurers and underwriters. Contractor shall obtain adequate insurance to cover all construction equipment rented or leased from third parties.

4.2 **Statutory Insurance Benefits**

Contractor shall maintain with respect to the Work to be done under the Contract, in each applicable jurisdiction, all statutory insurance benefits and other insurance required by law including, without limitation, unemployment Insurance.

4.3 **Third Party Insurance**

Contractor shall at its sole expense, in the joint names of Owner/Project Manager and Contractor prior to the commencement of any Work on the Site, pursuant to the Contract, obtain adequate insurance, against liability for damage or death of or personal injury occurring before Final Performance Acceptance to any Person (including any employee of the insured parties) or to any property due to or arising out of the performance or non performance of the Work by Contractor or any Sub-contractors and other third party liabilities on account of obstruction, loss of amenity, trespass, nuisance or advertising pursuant to the Contract.

4.4 **Automobile Liability Insurance**

Contractor shall, at its sole expense and in the joint names of Owner/Project Manager and Contractor, shall maintain automobile liability insurance covering all owned, non-owned and hired automobiles, trucks and other vehicles used by Contractor or its Sub-contractors in connection with the Work.

4.5 **Insurance against Accident, etc. to Workmen and Other Insurances**

Contractor shall, at its sole expense, insure and shall maintain Insurance as required by Workmen Compensation Act or any other Acts applicable in India and all other Applicable Laws for all actions, suits, claims, demands, costs, charges and expenses arising in connection with the death of or injury to any person employed by Contractor or its Sub-contractors for the purpose of the performance of the Work. Contractor shall also maintain Contractor's All Risk (CAR) insurance.

In addition, Contractor shall obtain and maintain all other Insurances required to be obtained and maintained by it for fulfilling all his obligations under the Contract including Insurances against damages to designs and the like arising out of Services.

4.6 **General Insurance Requirements**

All insurance obtained by Contractor shall be maintained with an insurer approved by the Owner/Project Manager.

On or prior to the Commencement Date of Contract, Contractor shall furnish to the Financing Parties and Owner/Project Manager certificates of Insurance (or if one of the Financing parties, Owner/Project Manager or Owner's Representative so directs, copies of the actual insurance policies signed by an authorised Representative of the insurer) from each Insurance carrier showing that the above required Insurance is in force, the amount of the carrier's liability there under, and further providing that the Insurance will not be cancelled, changed or not renewed until the expiration of at least 90 (ninety) Days (to the extent obtainable under commercially reasonable terms) after written notice of such cancellation, change or non-renewal has been received by Owner/Project Manager and the Financing Parties and Contractor. All policies and

certificates of Insurance affected in accordance with this clause shall be in form and content acceptable to Owner/Project Manager and Financing Parties.

4.7 **Remedy on Failure to Insure**

If Contractor fails to effect and keep in force the Insurance for which it is responsible under the Contract, Owner/Project Manager may effect and keep in force any such Insurance, and pay such premiums as may be necessary for that purpose, and from time to time, after issuance of a reimbursement request thereof accompanied by relevant supporting documentation, deduct the amount so paid by Owner/Project Manager from any amounts due or which may become due to the Contractor under the Contract.

4.8 **Descriptions not Limitations**

The Insurance coverage referred to in this clause 4.0 shall be set forth in full in the respective policy forms, and the foregoing descriptions of such policies are not intended to be complete, nor to alter or amend any provision of the actual policies and in matters, if any, in which the said description may be conflicting with such instruments, the provisions of the policies of the Insurance mutually agreed by the Parties shall govern; provided, however, that neither the content of any Insurance policy or certificate nor Owner/Project Manager's approval thereof shall relieve the Contractor of any of its obligations under the Contract.

4.9 **Fire Insurance**

Unless otherwise instructed by the Owner/Project Manager, the Contractor shall on signing the Contract insure the works and keep them insured until the completion of the Contract against loss or damage by fire with a company to be approved by the Owner/Project Manager, in the joint names of the Owner/Project Manager and the Contractor for such amount and for any further sum if called upon to do so by the Owner/Project Manager, the premium of such further sum being allowed to the Contractor as an authorised extra. Such policy shall cover the property of the Owner/Project Manager only and shall not cover any property of the Contractor or of any of his approved Sub- Contractor or employees. The Contractor shall deposit the policy and receipts for the premiums with the Owner/Project Manager within twenty-one days from the date of signing the Contract unless otherwise instructed by the Owner/Project Manager. In default of the Contractor not insuring as provided above, the Owner/Project Manager /Owner's Representative on his behalf may so insure and may deduct the premiums paid from any money due, or which may become due to the Contractor. The Contractor shall, as soon as the claim under the policy is settled, or the work reinstated by the Insurance Office should they elect to do so, proceed with all due diligence with the completion of the works in the same manner as though the fire had not occurred and in all respects under the same conditions of Contract. The Contractor, in case of rebuilding or reinstatement after fire, shall be entitled to such extension of time for completion, as the Owner/Project Manager may deem fit.

Notwithstanding the above, the Contractor shall provide adequate portable fire extinguishers in his work area and take all adequate precautions against fire hazard and train regularly his supervisors/workmen in firefighting techniques.

In the event of occurrence of any fire being attributable in the opinion of the Owner/Project Manager /Owner's Representative to the Contractor's negligence, no extension of time will be granted.

4.10 **Damages to Persons & Property Insurance in Respect of**

4.10.1 The Contractor shall be responsible for all injury to persons, animals or things, and for all damage to the structural and/or decorative part of property which may arise from the operations or

neglect of himself or of any of his approved Sub-contractor or of any of his or his approved Sub-contractor's employees, whether such injury or damage arises from carelessness, accident or any other cause whatever in any way connected with the carrying out of this Contract. The Contractor shall indemnify the Owner/Project Manager and hold him harmless in respect of all and any losses arising from any such injury or damage to person or property as aforesaid and also in respect of injury or damage under any applicable laws and also in respect of any award of compensation or damages consequent upon a claim in relation to such injury by a third party.

The Contractor shall have to cover personal third-party insurance as per labour law/statuary requirements/applicable laws of state Government per person per incident. Third party insurance for damage to surrounding property shall be maintained by the Contractor per labour law/statuary requirements/applicable laws of state Government.

4.10.2 The Contractor shall reinstate at his cost all damages of every sort mentioned in this clause, so as to deliver the whole of the Contract Works complete and perfect in every respect and so as to make good or otherwise satisfy all claims for damage to the property of third parties.

4.10.3 The Contractor shall indemnify the Owner/Project Manager against all claims which may be made against the Owner/Project Manager by any member of the public, or other third party in respect of anything which may arise in respect of the works or in consequence thereof and shall at his own expense arrange to effect and maintain, until the completion of the Contract with an approved nationalised insurance company, a Policy of Insurance in the joint names of the Owner/Project Manager and the Contractor against such risks and deposit such policy or policies with the Engineer from time to time during the currency of this Contract. The Contractor shall also indemnify the Owner/Project Manager against all claims which may be made upon the Owner/Project Manager, whether under the Workmen's Compensation Act or any other Statute in force during the currency of this Contract or at common law in respect of any employee of the Contractor or any of his approved Sub-contractor and shall at his own expense effect and maintain, until the completion of the Contract, with an approved nationalised insurance company, a Policy of Insurance in the joint names of the Owner/Project Manager and the Contractor against such risks and deposit such Policy or Policies with the Engineer from time to time during the currency of this Contract.

The Contractor shall be responsible and liable to the Owner for all losses, which may be excluded from the Insurance Policies above referred to and also for all other damage to any property arising out of or incidental to the negligent or defective carrying out of this Contract.

4.10.4 The Contractor shall also indemnify the Owner/Project Manager in respect of any costs, charges or expenses arising out of any claim or proceedings and also in respect of any award of compensation of damage arising on account of the above.

4.10.5 The Owner/Project Manager or the Engineer shall be at liberty and is hereby empowered to deduct the amount of any damages, compensation costs, charges and expenses arising or accruing from or in respect of any such claim or damage from any sum due or to become due to the Contractor.

4.10.6 The Owner/Project Manager or the Engineer shall not be responsible or be held liable for any damage to person or property consequent upon use, misuse or failure of any construction tools and equipment used by the Contractor or any of his Sub-contractors even though such construction tools and equipment be furnished, rented or loaned to the Contractor or his Sub-contractors by the Owner/Project Manager. The acceptance and/or use of any construction tools and equipment by the Contractor or his Sub-contractors shall be construed to mean that the Contractor accepts all responsibility for and agrees to indemnify and save harmless, the Owner/Project Manager or the Engineer from any and all claims for said damages resulting from

said use, misuse or failure of such construction tools and equipment for which the Owner/Project Manager may be liable.

5.0 FOSSILS, INSPECTION & TESTING

5.1 All fossils, coins, articles of value or antiquity, human remains and structures and other remains or things of geological or archaeological or religious or artistic interest or monetary value discovered on the Site shall be the property of the Owner/Project Manager, except as required under applicable law. The Contractor shall take reasonable precautions to prevent his staff, labour or other persons from removing or damaging any such article or thing. The Contractor shall, immediately upon discovery of such article or thing, advice the Owner/Project Manager or Owner's Representative

5.2 **Inspection and Testing**

5.2.1 Contractor shall perform all inspection, expediting and quality surveillance as may be required for performance of the Services. Contractor's responsibilities under this sub-clause shall include, without limitation, inspecting all supplies, Materials and equipment that comprise or will comprise the Relevant Package or that are to be used in performance of the Works.

5.2.2 The Contractor shall at its own expense carry out at the place of manufacture and/or on the site carry out all such tests &/or inspections of the plant & equipment and any part of the facilities as are specified in the contract. The Contractor shall carry out the inspection and quality control aspects as set out in Technical Specification. In the event the Owner/Project Manager establishes that the Contractor is not carrying out all such inspection and quality control aspects, the Owner/Project Manager has the right to appoint at Contractor's cost third party inspection agencies.

5.2.3 The Contractor shall obtain from any relevant third party or manufacturer any necessary permission or consent to enable the Owner/Project Manager (or their designated representatives) to attend the test and/or inspection. Contractor / Contractor's third party inspection agency shall perform such detailed inspection of all work in progress at intervals appropriate to the stage of design, engineering, procurement, fabrication, construction, erection, testing, Commissioning, start-up or Tests before Provisional Acceptance as is necessary to ensure that such work is proceeding in accordance with the Contract, the Documents, Applicable Laws, Applicable Permits, Good Engineering Practices and Prudent Electricity Industry Practice and to protect Owner/Project Manager against defects and deficiencies in such work (including any which would diminish or void the ability of Owner/Project Manager or Contractor to realise upon any manufacturer's or supplier's warranty or under any applicable insurance coverage). On the basis of such inspections, Contractor shall keep Owner/Project Manager continuously informed of the progress and quality of all work, whether performed by Contractor or any Sub-contractor, and shall provide Owner/Project Manager with Written reports which shall contain notwithstanding anything to the contrary contained herein defects and deficiencies revealed through such inspections and of measures proposed by Contractor to remedy such defects and deficiencies. Owner/Project Manager or Owner's Representative shall have the option, at Owner's /Project Manager's expense, of being present at all such inspections, and the Contractor shall give notice of all such inspections agreed.

5.2.4 In the event that the progress and quality of the work is not proceeding in accordance with the Contract, Owner/Project Manager or Owner's Representative shall be entitled to make recommendations to Contractor or any Sub-contractor for the purpose of remedying such failure and any such defects and deficiencies or variances. Any inspection performed or not performed by Owner/Project Manager hereunder shall not be a waiver of any of Contractor's obligations under the Contract or be construed as an approval or acceptance of any of the work or Services

hereunder or absolve the Contractor in any manner of its liabilities, responsibilities and obligations under the Contract.

5.2.5 The Contractor shall, where required give due notice to the Owner/Project Manager/Owner's Representative whenever such work is ready before covering up or putting out of view. The Owner's Representative shall then either carry out the inspection, examination, measurement or testing or notify the Contractor that it is considered unnecessary.

5.2.6 The Owner's Representative shall have the right to re-inspect any work though previously inspected and approved by him at the Site, before and after the same are erected. If by the above inspection the Owner's Representative rejects any work, the Contractor shall make good for such rejections either by replacement or modifications/ repairs as may be necessary to the satisfaction of the Owner's Representative.

5.2.7 The Owner/Project Manager and the Owner's Representative shall be entitled, during design, engineering, manufacture, fabrication and preparation at any places where work is being carried out, to inspect, examine and test the materials and workmanship, and to check the progress in the performance of the work at no extra cost to the Owner/Project Manager. The Contractor shall give all reasonable facilities and assistance, including access to Documents to carry out such inspection, examination, measurement and testing. All inspection and tests shall be in line with approved Inspection & Test Plans and Owner/Project Manager/Owner's Representative shall carry out necessary inspection as per the Contract. Should any inspected work or service fail to conform to the Contract, the Owner/Project Manager may reject such work or service and the Contractor shall either replace or make alterations necessary to meet Contract requirements free of cost to the Owner/Project Manager. The Owner/Project Manager's right to inspect, test, and where necessary, reject the work or service shall in no way be limited or waived by reason of any part of the work having previously been inspected, tested and passed by the Owner/Project Manager or Owner's Representative.

5.2.8 The Contractor shall agree, with the Owner/Project Manager/Owner's Representative about the time and place for the testing of any equipment / Materials and other parts of the Works as specified in the Contract. The Contractor shall give 15 (fifteen) Days' notice for inspection of indigenous Materials and 30(thirty) days for Offshore Materials. The Owner/Project Manager/Owner's Representative shall give the Contractor not less than 24 (twenty-four) hours' notice of his intention to attend the Tests. The Contractor shall provide sufficient suitably qualified and experienced staff to carry out the Tests specified in the Contract. The Contractor shall present to the Owner/Project Manager/Owner's Representative the calibration certificates of all the testing and measuring instruments proposed to be used for carrying out the Tests. In case the Owner/Project Manager/Owner's Representative is not satisfied with the calibration certificates, the Contractor shall arrange to get the concerned instrument(s) recalibrated to the satisfaction of the Owner/Project Manager/Owner's Representative.

5.2.9 If the Owner's Representative does not attend at the time and place agreed, or if the Contractor and the Owner's Representative agree that the Owner's Representative shall not attend, the Contractor may proceed with the Tests, unless the Owner's Representative instructs the Contractor otherwise. Participation by Owner/Project Manager or Owner's Representative in or their absence from or failure to participate in any Tests (other than the Performance Tests) shall not relieve or absolve the Contractor from any Guarantee or Warranty or obligations of Services under or in pursuance of the Contract.

5.2.10 The Contractor shall promptly forward to the Owner/Project Manager/Owner's Representative duly certified reports of the Tests.

5.2.11 If the Owner/Project Manager/Owner's Representative requires such equipment, materials, design or workmanship to be re-tested, the Tests shall be repeated under the same terms and

conditions. Contractor shall undertake an additional testing of any material, equipment or the work, if the Owner/Project Manager/Owner's Representative believes the results of earlier Tests are not accurate or do not establish the true condition to specification of equipment, material or work being tested. If such retesting demonstrate that the work, equipment or material being so tested conforms to the requirements of Contract, then Owner/Project Manager shall bear the cost of such additional Test and the cost of any required uncovering and covering the Goods or Services and shall grant the extension of time for completion, if necessary. If however such retesting confirms Owner/Project Manager/Project Manager's conclusion and cause the Owner/Project Manager to incur additional costs, such costs shall be recoverable from the Contractor by the Owner/Project Manager and may be deducted by the Owner/Project Manager from any monies due, or to become due, to the Contractor. Neither the failure by Owner/Project Manager/Owner's Representative to discover defects, nor any payment to Contractor in respect of the Tests, shall prejudice the rights of Owner/Project Manager thereafter to require and obtain from Contractor the performance of the Services in accordance with the Contract herewith. Owner/Project Manager/Project Manager shall not be deemed to have accepted any Services as a result of any additional testing.

5.3 **Rejection**

If, as a result of inspection, examination or testing, the Owner/Project Manager/Owner's Representative decides that any works, equipment, system, materials, design or workmanship has failed in such inspection, examination or tests or is defective or otherwise not in accordance with the Contract, the Owner's Representative may reject such Works, equipment, system, materials, design or workmanship and shall notify the Contractor promptly, stating his reasons. The Contractor shall then promptly correct or replace, such item or portion so as to pass retesting and otherwise meet and conform to such requirements. Following any such rejection, all expenses reasonably incurred by the Owner/Project Manager in consequence of such re-testing or inspection shall be borne by the Contractor. No changes to project schedule or increase in the contract price shall be granted with respect to such additional testing. Contractor shall solely bear any cost resulting there from.

6.0 CONTRACT PRICE AND PAYMENT:

6.1 **Contract Price**

Subject to the full and complete performance of the Works and in full consideration to the Contractor for all costs incurred in connection therewith, the Owner shall pay, and the Contractor shall accept, in accordance with the Contract, the Contract Price as stated in the Schedule of Price inclusive of all taxes. Such sum may not be adjusted except as set forth in the Contract. Unless otherwise stated in the Contract, the Contract Price covers all the Contractor's obligations under the Contract and all things necessary for the proper design, execution and completion of the Works and the remedying of any defects.

The Contractor shall be deemed to have satisfied himself of the correctness and sufficiency of the Contract Price having examined the Pre-Effective Date Conditions and all the data, information made available in the tender to its satisfaction.

In case of any discrepancies in the Contract Price, the following rules shall prevail:

a) Where there is discrepancy between words and figures, the Contract Price as stated in words shall prevail.

b) Where the total of values of individual line items do not match the total Contract Price in the Price Schedule, the total Contract Price value shall prevail. The individual line-item values shall be adjusted to match the total Contract Price value.

6.2 **Pre-Effective Date Conditions**

The Contractor has had sufficient opportunity to investigate and make a careful examination, survey and inspection of and has investigated and made a careful examination, survey and inspection of the Pre-Effective Date Conditions and has satisfied itself as to the feasibility of executing the Contract Works at the Site. The "Pre-Effective Date Conditions" shall consist of the following:

- the Site and surrounding areas and to have satisfied itself as to the condition of and circumstances affecting the Site (including but not limited to soil, surface, subsurface, environmental, geological, seismic, geotechnical, climatic, hydrological conditions and the existence of underground obstructions, fossils, antiquity structures, archaeological remains, and the general and local conditions with respect to waste disposal, handling and storage of Equipment, availability and quality of utilities, location of underground utilities, and equipment and facilities needed prior to and during performance of all the Contractor's obligations under the Contract);
- the availability and condition of methods of transporting the Equipment and Contractor's Equipment to the Site and the suitability and availability of access routes to the Site (including the availability and condition of roads);
- the local ambient conditions based upon previous ambient data;
- the qualifications of all Sub-contractors;
- all other difficulties, hazards and other matters that may affect the Contractor's performance.

The Contractor specifically acknowledges and accepts the Pre-Effective Date Conditions and agrees that the Contract Price shall not be increased and Guaranteed Completion Date shall not be extended, in each case as a result of any Pre-Effective Date Condition. Without prejudice to the Contractor's obligations under the Contract, the Contractor shall solely be responsible for any misunderstanding or incorrect information that the Contractor obtained and relied on.

Where the Contractor wishes to have other access or intrude on to or over land adjoining the Site, then arrangements must be made by the Contractor and such access or intrusion will be entirely at the Contractor's risk and cost. The Contractor shall keep the Owner informed in respect of negotiations for any such arrangements and the Owner's consent shall be required for any such arrangements.

6.3 **Taxes & Duties**

The Contractor shall be responsible for and shall administer and pay all other taxes including stamp duty and all sales, use, gross receipts, and other similar taxes and contributions imposed by any taxing authority upon the sale, purchase or use of the equipment and on all services or labour carried out in relation to the Contract Works, as well as taxes on or measured by the Contractor's income or taxes on or measured by wages earned by employees of the Contractor or any Sub-contractor or any taxes or contributions in the nature of workman's compensation, social security, old age benefits or similar items based upon or relating to employment of workers by the Contractor or any Sub-contractor. The Contractor shall furnish to the appropriate taxing authorities all required information and reports in connection with such taxes.

Notwithstanding the foregoing above, the Owner shall not be required to reimburse the Contractor for any taxes to the extent such taxes are payable as a result of the Contractor's or any Sub-contractor's failure to follow or comply with available procedures for the exemption from or abatement of such taxes.

The Owner shall have the right to deduct or set-off any monies in respect of any taxes or levies or any withholding tax charged to the Owner which should be attributable to the Contractor under this Clause from any payment to be made by the Owner to the Contractor under the Contract.

The Contractor shall be responsible for the payment of any taxes, duties, levies or imposts imposed in relation to any surplus materials and Contractor's Equipment which he / his contractor removes from site.

The Contractor shall indemnify, save harmless and defend the Owner, its directors, officers, employees and agents against all and any liabilities, claims and charges (including any penalties, fines, fees and like) arising in connection with the matters referred to in above clauses.

7.0 COMMENCEMENT, DELAYS AND EXTENSIONS OF TIME

7.1 Notice to Proceed

Contractor shall commence performance of Work on the Effective Date of the Contract or any other date which the Owner/Project Manager specifies (the "Commencement Date") through a Notice to Proceed (the "Notice to Proceed") delivered for commencement of the Work, which shall not be earlier than the date of issue of the Notice to Proceed. Unless specifically agreed otherwise in the Contract, the Effective Date of the Contract shall also be reckoned as the Commencement Date.

7.2 Commencement of the Work

Contractor will commence the Work as per the Effective Date / Commencement Date indicated in the Letter of Intent (LOI) or a Letter indicating a Notice to Proceed (NTP) date and/or the Effective Date / Commencement date as mentioned in the Contract.

7.3 Contractual Time for Completion

7.4 All the Works under the Contract shall be completed and shall have successfully passed the Tests before Take-over within the time for completion as set forth in the specification failing which the Contractor shall pay to the Owner/Project Manager for such delay in Relevant Package Completion (the "Delay Liquidated Damages"). Payment of any Delay Liquidated Damages shall not affect or prejudice in any way or manner Owner/Project Manager's right to terminate the Contract nor shall any termination of Contract prejudicially affect the Owner/Project Manager's right to recover any accrued Delay Liquidated Damages or release the Contractor from any obligation for payment thereof.

The Contractor agrees that the work shall be commenced and carried on at such points and in the order of precedence and at such times and seasons as may be directed by the Owner/Project Manager in accordance with the schedule for completion of the work as outlined elsewhere in the Contract. The Contractor declares that he has familiarised himself with the site and rights-of-way, with all the local conditions, and with all the circumstances which may, or are likely to affect the performance and completion of the work, and that he has allowed for such conditions. However, if a time schedule is submitted by the Contractor so as to keep the phasing of work generally in line with the time schedule drawn up and to keep the components unchanged, such time schedule after approval from the Owner/Project Manager, shall be accepted and complied with by the Contractor and it shall form a part of the Contract. The progress of work will be checked at regular monthly intervals and the percentage progress achieved should be commensurate with the time elapsed after the award of the Contract.

7.5 Extension of Time for Completion

7.5.1 If the Contractor shall desire an extension of time for completion of work on the grounds of his having been unavoidably hindered in its execution or any other ground, he shall apply in writing to the Owner/Project Manager within 7 days of the date of hindrance on account of which he desires such extension as aforesaid. This application shall invariably be accompanied by sufficient documentation giving reasons for seeking such extension. No application for such extension shall be entertained if it is not received in sufficient time to allow the Owner/Project Manager to consider it and the Contractor shall be responsible for the consequences arising in relation thereto. Upon receipt, Owner/Project Manager may accept or reject such application.

7.5.2 In the event of a disruption (other than suspension by Owner/Project Manager) to the Schedule and if in the opinion of Contractor it is not the responsibility of Contractor or its any Sub-contractor and which might have been caused due to action of any third parties which Contractor might not have reasonably prevented, and that Contract entitles Contractor to time extension and I or other relief from Owner/Project Manager, the Contractor shall notify the Owner/Project Manager within twenty four (24) hours and provide a written report (to the best of Contractor's knowledge at the time) of the disruption within 72 (Seventy Two) Hours of Contractor's learning of the disruption and such report shall be supplemented on a prudent, informative and timely basis thereafter not later than 14 (Fourteen) Days from the date of Contractor's first learning of such disruption. In such an event the Contractor may modify and resubmit for approval to Owner/Project Manager/Owner's Representative computer-based network schedule and modifications if any required to the Schedule. Upon receipt, Owner/Project Manager shall take reasonable action in accordance with the Contract.

7.5.3 Contractor in any case has to inform to Owner immediately upon learning of any possible hindrances to the Works which have caused or may cause delay or other impact to the Works to enable Owner take suitable action.

7.5.4 No necessity for an extension of time is anticipated but if untoward or extraordinary circumstances beyond the control of the Contractor should arise, which in the opinion of the Owner/Project Manager should entitle the Contractor to a reasonable extension of time, such extension may be granted but shall not operate to release the Contractor from any of his obligations, other than in relation to payment of liquidated damages for such delay (only to the extent of the extension granted by the Owner/Project Manager. For purpose of this clause, untoward and extraordinary circumstances are defined under clause 17.0 hereinafter. Under above circumstances, only extension of time may be granted but the Contractor will not be entitled to any additional compensation. In case of strike or lockout, the Contractor shall, as soon as possible, give written notice to the Owner/Project Manager, but the Contractor shall nevertheless constantly use his endeavours to prevent delay and shall do all that may reasonably be required to the satisfaction of the Owner/Project Manager to proceed with the work.

7.6 The Owner/Project Manager shall have the right to order discontinuance/suspension of the work, in whole or in part, for such time as may be necessary in the opinion of Owner. In such an event, the Owner/Project Manager will grant such extension of time for completion of the Contract which in its opinion is proper and/or other relief in accordance with Contract in consequence of such delay.

7.6.1 **Resumption of Work**

After receipt of permission or of instruction to proceed, the Contractor shall, after notice to the Owner/Project Manager, and together with the Owner's Representative, examine the Works and Materials affected by the suspension. The Contractor shall make good any deterioration or defect in or loss of the Works or Materials, which has occurred during the suspension. The Work after resumption shall be started by the Contractor within 7 (seven) Days of receipt of permission or instruction to proceed.

7.7 **Rate of Progress**

7.7.1 If, at any time, the Contractor's actual progress falls behind the Schedule in any manner or it becomes apparent that it will so fall behind, the Contractor shall submit to the Owner/Project Manager / Owner's Representative a revised programme taking into account the prevailing circumstances. The Contractor shall, at the same time, notify the Owner/Project Manager / Owner's Representative of the steps being taken to expedite progress, so as to achieve completion within the time for completion stipulated under the Contract, including in particular the Schedule and the Guaranteed Completion Dates. The Contractor may also be asked to modify the plan, as a result of the changed circumstances due to delay, in order to complete the Work in time.

7.7.2 If any steps taken by the Contractor in meeting his obligations under this sub clause no. 7.7 cause the Owner/Project Manager to incur any additional costs, such costs shall be recoverable from the Contractor by the Owner/Project Manager and may be deducted by the Owner/Project Manager from any monies due, or that may become due, to the Contractor under the Contract or otherwise.

7.8 **Non-Performance by Contractor**

7.8.1 If the Contractor, except on account of any legal restraint upon the Owner/Project Manager, is preventing the continuance of the work or in case of a certificate for interim payment not paid within the period for honouring certificate, shall suspend the Works or in the opinion of the Engineer shall neglect or fail to proceed with due diligence in the performance of his part of the Contract or if he shall more than once make default in respect of Scope of Contract, the Owner/Project Manager and/or the Engineer shall have the power to give notice in writing to the Contractor requiring that the Work be proceeded within a reasonable manner and with reasonable dispatch, such notice shall purport to be a notice under this clause. After such notice shall have been given, the Contractor shall not be at liberty to remove from the site of the Works or from any ground contiguous thereto any plant or materials belonging to him which shall have been placed thereon for the purpose of the Works and the Owner/Project Manager shall have a lien upon all such plant and materials to subsist from the date of such notice being given until the notice shall have been compiled with. If the Contractor shall fail for 7 days after such notice has been given to proceed with the Works as therein prescribed, the Owner/Project Manager may proceed as provided in Clause 13.2 hereinafter.

7.8.2 If the Contractor fails to perform as per the expectations of the Owner/Project Manager and consistently fails to achieve intermediate milestones as mentioned in the contract or fails to proceed with due diligence in the performance of his part of the contract or fails to make such due progress as would enable the works to be completed within period agreed, then in addition to the action proposed in clause 13.2 hereinafter, the Owner/Project Manager shall take recourse as per the following clause 7.8.3:

7.8.3 After giving 7 days' notice of non-performance to the Contractor, as per clause 13.2 hereinafter, the Owner/Project Manager shall be at liberty to remove items or part of the scope of the works of this contract and get the same executed by third party at the Contractor's risk and cost. The Owner/Project Manager has the right to recover the cost difference between the actual amount spent by the Owner/Project Manager in getting these works executed by third party and the amount that would have been payable to the Contractor at the quoted rates of this contract.

7.9 **WORK PARTLY ABANDONED**

7.9.1 If any time after commencement of the work, the Owner shall for any reason whatsoever, not require the Partly work thereof as specified in the Contract to be carried out, the Engineer shall give notice in writing of the fact to the Contractor who shall have no claim to any payment of compensation whatsoever on account of any profit or advantage which he might have derived

from the execution of the work in full but which he did not derive in consequence of the full amount of the work not having been carried out nor shall he have any claim for compensation by reason of any change having been made in the original specifications, drawings, designs and instructions which shall involve any curtailment of the work as originally contemplated.

7.9.2 The Contractor shall be paid the charges on the cartage only of materials actually brought to the site by the Contractor and rendered surplus as a result of the abandonment or curtailment of the work or any portion thereof and taken back by the Contractor, provided however, that the Engineer shall have in all such cases, the right to purchase these materials at their purchase price or at current local rates whichever may be less.

8.0 CERTIFICATE OF ACCEPTANCE / COMPLETION

8.1 **Provisional Acceptance Certificate (PAC)**

8.1.1 Provisional Acceptance of Works shall occur if and only if:

8.1.1.1 Completion of all the Works and successful completion of all Tests to the satisfaction of Owner/Project Manager in accordance the Scope of Work, Technical Specifications and Contract Documents.

8.1.1.2 Rectification of all punch list items other than those which are minor in nature (would not affect intended operation/use of the Works and can be attended to subsequently while the Works is put in operation and in use).

8.1.1.3 Owner/Project Manager/Owner's Representative determine that the Relevant Package is complete and can be legally, safely and reliably placed in commercial operation with a normal compliment of operating personnel,

8.1.1.4 The Relevant Package is in accordance with all Applicable Laws and all government approvals, Prudent Utility Practices and Good Engineering Practices.

8.1.1.5 All Permits required to operate and maintain the Relevant Package, which are to be obtained by Contractor, have been obtained.

8.1.1.6 Owner/Project Manager has received from Contractor:

(i) All Documents required under the Contract for Owner/Project Manager to operate and maintain the Relevant Package,

(ii) All special tools and other maintenance tools and tackles, if any, as per Contract.

8.1.1.7 Contractor has delivered to Owner/Project Manager a completion certificate certifying each of the above foregoing and Owner/Project Manager has accepted the same.

8.1.2 The Owner/Project Manager shall issue a Provisional Acceptance Certificate to the Contractor certifying the date of achievement of the last of the condition under clause 8.1.1 above upon which the Provisional Acceptance has occurred subject to Take-over of the Relevant Package has taken place. Any Liquidated Damages for delay accruing pursuant to the Contract for failure of the Relevant Package to achieve Provisional Acceptance by its Guaranteed Completion Date shall stop accruing as of the date specified in the Certificate of Provisional Acceptance.

8.1.3 On issuance of Provisional Acceptance Certificate, the Contractor shall handover to Owner/Project Manager, and the Owner/Project Manager shall Take-over such Relevant Package operating in its normal, steady-state, operating mode. Forthwith upon such Take-over, Owner/Project Manager shall be responsible, for the care, custody and operational control of the

Relevant Package. The Contractor's obligations towards Warranty and Latent Defects shall commence from the date of Provisional Acceptance Certificate of Relevant Package.

8.2 **Final Acceptance Certificate (FAC)**

8.2.1 Final Acceptance of Works shall occur if and only if:

8.2.1.1 Successful completion of Provisional Take Over of the Works

8.2.1.2 Contractor has completed all the Work including completion of all balance Punch List items in accordance with the Contract

8.2.1.3 Final Documents for operation and maintenance including 'As built' drawings are provided by the Contractor to the Owner/Project Manager as per the Contract

8.2.1.4 Contractor has delivered to the Owner/Project Manager a completion certificate certifying each of the foregoing and as under:

(i) All the Contractor's and Sub-contractor's personnel, supplies, unused Materials, waste, rubbish and temporary facilities located at or near such Relevant Package have been removed,

(ii) Final Acceptance has occurred for the Relevant Package and all other provisions of, and all items required by this Contract have been performed or delivered, as the case maybe, in accordance with this Contract and in a manner satisfactory to Owner/Project Manager.

(iii) All Sub-contractors have been paid the dues by the Contractor and no due certificates received from such Sub-contractor.

(iv) All statutory or legal liabilities on account of the work performed under the contract have been duly calculated and paid by the Contractor.

8.2.2 Upon certification by Contractor of completion of sub-clauses under clause 8.2.1.5 and acceptance of the certificate by the Owner/Project Manager, the Owner/Project Manager shall issue a Final Acceptance Certificate certifying such matters within 120 (one hundred and twenty) Days.

9.0 LIQUIDATED DAMAGES

9.1 **Liquidated Damages for Delay**

9.1.1 If Provisional Acceptance Certificate does not occur on or before the Guaranteed Completion Date of Relevant Package, Contractor shall pay Liquidated Damages to Owner/Project Manager for such delay for each and every week or part thereof which elapses after the Guaranteed Completion Date for the Relevant Package until the earlier of (i) Provisional Acceptance Certificate, or (ii) the Day on which Contractor has paid to the Owner/Project Manager the maximum amount of Liquidated Damages for delay pursuant to the Contract.

9.1.2 The Liquidated Damages payable by Contractor to the Owner/Project Manager is 0.5% of the Contract Price for every week or part thereof of delay of not achieving the intermediate milestones (to be arrived at during contract finalization), subject to a maximum of 5% of Contract Price per milestone (the "Liquidated Damages for Delay") and 1% of the Contract Price for every week or part thereof of delay of not achieving the final milestones subject to a maximum of 10 % of the Contract Price for the overall schedule.

9.1.3 Notwithstanding the foregoing, no Liquidated Damages for Delay shall be payable for period of delay in achieving Provisional Performance Acceptance beyond Guaranteed Completion Date of

the Relevant Package to the extent such delay is solely on account of Force Majeure Event and Contractor has been granted an extension of time pursuant to clause 17.0 hereof.

9.1.4 If at any time, the Contractor is falling behind the schedule for intermediate milestone/s, he shall take necessary action to make good for such delays as per various provisions in the Contract to ensure overall Project schedule and achieve the final milestone/s. In case the Contractor is able to achieve the final milestone/s by the Guaranteed Completion Date/s, the Liquidated Damages deducted for the delays in intermediate milestone/s shall thereon be refunded to the Contractor along with the final payment.

9.1.5 The Contractor shall pay to the Owner/Project Manager the Liquidated Damages for Delay calculated by Owner/Project Manager pursuant to the contract failing which same shall be adjusted from any sum due or payable by Owner/Project Manager to Contractor or recovered from performance and other securities provided by the Contractor.

9.2 **The Liquidated Damages for Failure to meet Performance Guarantees**

9.2.1 The Performance Liquidated Damages payable by the Contractor to the Owner/Project Manager which will be calculated as set forth in the Contract / Technical Specifications.

9.3 **Liquidated Damages Being Reasonable**

The Parties acknowledge that:

a) Damages for Contractor's failure to meet any Guaranteed Completion Date and/or Contractor's failure to achieve the Performance Guarantee, are difficult to determine and that the Liquidated Damages set forth in the Contract including clause no. 9.0 of these General Conditions of Contract are pre-determined, pre-agreed and appropriate measures of the damages for such delays or such shortfalls in performance and are neither penalty nor consequential damages sustained by Owner/Project Manager as a result of such delays and / or shortfalls. Payment of all Liquidated Damages pursuant to this clause 9.0 shall be subject to the limitation on liability in respect thereof set forth in clause 16.2 of these General Conditions of Contract.

b) Contractor waives any defence to non-performance of its obligation to pay Liquidated Damages pursuant to the Contract including this clause no. 6.0 on the ground of alleged invalidity or unenforceability of provisions relating to payment of Liquidated Damages based on any theory or law or otherwise.

c) The amount of Liquidated Damages specified herein represent the projected commercial losses of the Owner/Project Manager, are fair and reasonable, are not penalties and reflect the Parties' assessment and estimate of such financial losses and damages of the Owner/Project Manager.

9.4 In view of the foregoing, the Contractor accepts and agrees to such Liquidated Damages as liquidated damages and shall not dispute such Liquidated Damages in any proceedings under the Contract.

10.0 WARRANTIES

10.1 **Contractor Warranties**

Contractor warrants to Owner/Project Manager with respect to the Performance of Work that all construction equipment and materials comprising the Contract Works will be new, conforming to Technical Specifications and free from defective workmanship. If Owner/Project Manager notifies Contractor in Writing with adequate detail of any such defects or deficiencies in the Works

discovered during the applicable Defects Liability Period thereof, Contractor shall (a) re-perform any of the work hereunder to correct any errors, omissions, defects or deficiencies in the Works, and (b) in the case of any defective equipment or materials, at Contractor's option either repair or replace at its Cost.

Contractor warrants to Owner/Project Manager that:

a) Adherence to the Operations Manual shall allow operation and maintenance of the Relevant Package with performance at a level at least as favourable to Owner/Project Manager as the Performance Guarantees and such operation will not impair any Warranty in respect of Work including equipment and materials;

b) The Relevant Package supplied will incorporate all such modifications and improvements as their respective manufacturers may have decided to incorporate in similar equipment as of the date of Taking-Over and the end of the Defects Liability Period, provided that the incorporation of such modifications and improvements may take place at such time during the Defects Liability Period as the parties may agree;

c) Not Used.

d) All information, averments and data submitted, starting from the Bid and up to end of Contract Period, to the Owner/Project Manager is correct and true. If at any later date, any of the aforesaid information, averment and data submitted is found to be false or incorrect, in part or in whole, the Contractor would be treated as a Contractor in Default as per Clause 13.2, and all consequences shall apply accordingly. The Owner/Project Manager would also be entitled to recover any cost or damages from Contractor including through encashment/forfeiture of Contract Performance Bank Guarantee and deductions from amounts payable to the Contractor.

10.2 **Defects Liability Period (also referred as Warranty Period)**

10.2.1 "Defects Liability Period" shall be 24 (twenty-four) months (unless a different Warranty Period is specified in either SCC or Technical Specifications in which case the Warranty Period as specified in Technical Specification / SCC shall have the precedence in the order of priority giving priority to Technical Specifications followed by SCC) beginning from the date of Provisional Acceptance / Take-over whichever is later of the Relevant Package. During this Warranty Period, the Contractor will be liable to rectify all defects in the Relevant Package if any arisen.

Component/sub-systems/parts wherein specific warranty longer than the Warranty Period for the Relevant Package is specified in the either the Technical Specifications or SCC, such extended warranty requirements of the identified component/sub-systems/parts as specified in the Technical Specifications / SCC (in the order of priority) shall prevail.

Any parts or components of the Goods or Services forming the Relevant Package having defects which is warranted and corrected by Contractor either by way of repair or replacement shall be further warranted by Contractor for a further period equivalent to the Warranty Period from the date such correction is affected and accepted by Owner/Project Manager/Owner's Representative.

Notwithstanding the above, in no event shall the warranty on any part or component exceed twice the contracted Warranty Period from the date of Provisional Acceptance (the "Sun-set Date").

Notwithstanding the Sun-set Date, where a recurring defect of any particular part or component results in the failure of such part or component more than twice within the appropriate Sun-set Date, such part or component shall be replaced or repaired by the Contractor until such time that

such part or component has operated without failure at least once for the contracted Warranty Period from the date of installation of such replaced / repaired part.

The above Warranties are however subject to the provision that should any scheduled inspection of a particular item of the Relevant Package falls due within the above Defects Liability Period and any part or component thereof is scheduled to be refurbished or replaced, then such parts are warranted only up to the date of such scheduled replacement or refurbishment. The refurbished or newly replaced parts shall thereafter be covered for under the terms and conditions agreed by the Parties with respect to such replaced or refurbished parts.

10.2.2 **Latent Defects Liability Period**

The Latent Defects Liability Period for the Relevant Package shall be 36 (thirty-six) months from the expiry of the Warranty Period for the Relevant Package, however, not less than sixty (60) months from the date of Provisional Acceptance of the Relevant Package. Any such Latent Defects identified during the appropriate Latent Defect Liability Period shall be corrected and made good by the Contractor at its sole Cost.

Should any scheduled inspection of a particular item of the Relevant Package fall due within the Latent Defects Liability Period and any part or component thereof is scheduled to be refurbished or replaced, then the warranty for such parts shall be limited up to the date of such scheduled replacement or refurbishment. The refurbished or newly replaced parts shall from this point onwards be covered for under the terms and conditions agreed by the Parties with respect to such replaced or refurbished parts.

10.2.3 **To Remedy Defective Work During Defects / Latent Defects Liability Period**

If the Work or any portion thereof shall be damaged in any way excepting by the acts of the Owner/Project Manager, or if defects not readily detected by proper inspection shall develop before the Provisional Acceptance Certificate, the Contractor shall forthwith make good, without compensation from the Owner/Project Manager, such damage or defects in a manner satisfactory to the Owner/Project Manager / Owner's Representative. In no case shall defective or imperfect work be retained.

In case any defects in the work due to bad materials and/or bad workmanship develop in the work before the expiry of this period, the Contractor on notification by the Owner/Project Manager shall rectify or remedy the defects at his own cost and he shall make his own arrangements to provide materials, labour, equipment and any other appliance required in this regard. The retention of Security Deposit/Performance Bank Guarantee by the Owner/Project Manager during this Defects Liability Period shall be as indicated in Special Conditions of Contract. In case even on due notification by the Owner/Project Manager, the Contractor fails to rectify or remedy the defects, the Owner/Project Manager shall have the right to get this done by other agencies and recover the cost incurred, by deductions from any money due or that may become due to the Contractor or from his security deposit/ Performance Bank Guarantee.

The Owner/Project Manager may, in lieu of such amending and making good by the Contractor, deduct from any money due to the Contractor or from his security deposit Performance Bank Guarantee, a sum to be determined by the Owner/Project Manager equivalent to the cost of amending such work and in the event of such security deposit/ Performance Bank Guarantee being insufficient, recover the balance from the Contractor together with any expense the Owner/Project Manager may have incurred in connection therewith.

The Contractor shall remain liable under the provisions of this clause notwithstanding the passing by the Owner/Project Manager of any certificate, final or otherwise or the passing of any accounts.

Owner/Project Manager shall give notice of observed defects promptly following such observation. Such notice must be given at the latest within thirty (30) Days from the end of the appropriate Warranty Period or Latent Defect Liability Period as applicable.

Contractor's obligation to effect repairs or replacement based on Contractor's Warranties shall not extend to failure caused by:

a) normal wear and tear;

b) failure to adhere to the Operation and Maintenance Manual; or

c) any repair or modification initiated or undertaken by Owner/Project Manager during the Warranty Period without the proper recourse to Contractor and without the Contractor's knowledge or consent, which consent shall not be denied unreasonably.

10.3 **Sub-contractor Warranties**

No warranty obtained from any Sub-contractor shall be deemed to reduce or limit Contractors Warranties or Latent Defects liability set forth in this clause 10.0 or Contractor's obligation to supply Goods or perform corrective work.

10.4 **Survival of Warranties**

Warrantees and Latent Defect Liability under the contract shall survive any termination of the Contract in respect of any part of the work for which Owner/Project Manager has paid Contractor.

10.5 **Emergency Repairs**

In the event of repairs carried out by the Contractor during the Defects Liability Period is not found satisfactory, the Owner/Project Manager reserves the right to rectify / replace the part at Contractor's risk and Costs.

In the event of an emergency where Contractor's personnel is not available on Site or cannot be on Site within an acceptable period of time and if in the judgement of Owner/Project Manager the delay from giving formal notice would cause serious loss or damage which could be prevented by immediate action, defects may be corrected by Owner/Project Manager or a third party designated by Owner/Project Manager at the Contractor's cost and expense, without giving prior notice to Contractor. In the event such action is taken by Owner/Project Manager, Contractor will be notified promptly and shall assist wherever possible in undertaking the necessary corrections. The above emergency repairs shall not relieve the Contractor from liability under the terms and General Conditions of Contract.

10.6 **Removal of the Defective Work**

If the defect or damage is such that it cannot be remedied expeditiously at the Site, the Contractor may, with the consent of Owner/Project Manager/Owner's Representative, remove from the Site for the purposes of repair any part of the Works which is defective or damaged. If the value of part or material removed from the Site is substantial (value to be finalised at appropriate stage) as determined by the Owner/Project Manager/Owner's Representative, the Contractor shall provide security in the form of bank guarantee for a value as determined by the Owner/Project Manager/Owner's Representative.

In case of defective parts which are not repairable at Site but are essential for commercial operation of the equipment, Contractor and the Owner's Representative shall mutually agree to a program of replacement or renewal which will minimise interruptions to the maximum extent, in the operation of the equipment and the Relevant Package and the Contractor shall expeditiously provide necessary parts for replacement before shutdown planned.

The cost of any special or general overhaul rendered necessary during the warranty period due to defects in Relevant Package or defective Work carried out by the Contractor, the same shall be borne by the Contractor.

11.0 INTERIM AND FINAL PAYMENTS

11.1 The Contractor's organisation shall maintain an independent estimate & billing division. Contractor shall be responsible for working out the detailed quantities for various items of work, from the progressive drawings, released for construction, within two months from the date of receipt of drawings. Detailed bill of quantities along with the abstract shall be submitted to the Engineer for his approval. Increase or decrease in these approved quantities due to revision in drawings or due to Engineer's instructions shall be incorporated by the Contractor and submitted to the Engineer for revised approval within 30 days from the receipt of revised drawings/instructions.

11.2 Bills are to be submitted in the format approved by the Owner/Engineer. Interim / Final bills shall be submitted on the basis of work completed against these approved quantities. Payment will be released by the Owner on verification of work completed against these approved quantities. No other method for billing shall be accepted by the Owner. Each bill shall be submitted along with the detailed measurement sheets, pour cards, reconciliation statements for all the materials issued by the Owner.

11.3 Running Account bill shall be monthly and in computerised format prepared in Microsoft Excel or any other mutually agreed software and uploaded in Owner's e-sourcing portal. The bills shall be error free and accompany all the supporting documents like JMRs, quality related documents, pour card, etc. The bill shall be submitted in soft copy (non-rewritable CDs) also.

11.4 Any interim payments shall be regarded as payments by way of advance against the final payment only and not as payments for work actually done and completed and shall not preclude the right of Owner/Project Manager or the Engineer from getting bad, unsound and imperfect or unskilled work to be removed and reconstructed by the Contractor or be considered as an admission of the due performance of the Contract or any part thereof in any respect or the accruing of any claim nor shall it conclude, determine or affect in any way the powers of Owner/Project Manager or the Engineer under these conditions or any of them as to the final settlement and adjustment of the payment or otherwise, or in any other way vary or affect the Contract.

11.5 A bill shall be submitted by the Contractor each month on or before the date fixed by the Owner for all works executed in the previous month and Owner shall take or cause to be taken the requisite measurement for the purpose of having the same verified. If the Contractor does not submit the bill within the time fixed as aforesaid, the Engineer at its discretion may depute within seven days of the date fixed as aforesaid a subordinate to measure the said work in the presence of the Contractor whose counter signature to the measurement list will be sufficient warrant and the Engineer may prepare a bill from such list which shall be binding on the Contractor in all respects. If the Contractor fails to countersign or to record the differences within a week from the date of measurement in the manner required by the Engineer then in any such event, the measurements taken by the Engineer or by the subordinate deputed by him as the case may be, shall be final and binding on the Contractor and the Contractor shall have no right to dispute the same.

11.6 The final bill shall be submitted by the Contractor within two months of the date of the Final Acceptance Certificate, otherwise the Engineer's certificate of the measurement and the total amount payable for the work accordingly shall be final and binding on all Parties.

11.7 The Contractor shall submit all bills in printed forms / Owner's e-sourcing portal as directed by Owner and the charges in the bills shall always be entered at the agreed rates as per the Contract

or in the case of any extra work ordered in pursuance of these conditions and not mentioned or provided for in the Contract at the rates subsequently accepted by the Owner for such work.

11.8 In case work is nearly or is anticipated to be suspended, or in case only unimportant progress is being made, or in case it is apparent that the Contractor is about to forfeit his Contract or that the money yet due to him will not complete his Contract, the Engineer may, at his discretion, withhold any payment which may be due to the Contractor.

11.9 The Contractor shall not demand, nor be entitled to receive payment for the work any portion thereof except, in the manner set forth in this Contract and only after the Engineer shall have given a certificate for such payment. For final payment, when the Work covered by this Contract has been completed, and Final Acceptance Certificate has been issued to the Contractor, the Contractor shall prepare a final abstract showing the total amount of work done and its value under and according to the terms of this Contract. The Contractor shall attach copies of the Engineer's completion certificate with his final abstract. From the total value thus arrived, all previous payments will be deducted and all deductions made in accordance with the provisions of this Contract and the remainder shall be paid by the Owner to the Contractor within three months of the date of submission of the Contractor's final bill except in case of disputed items.

11.10 **Deduction from / Withholding Contractor's Bills/Payment**

11.10.1 All costs, damages or expenses, which the Owner/Project Manager may have paid, for which under the Contract the Contractor is liable, will be claimed by the Owner/Project Manager. All such claims shall be billed by the Owner/Project Manager to the Contractor regularly as and when they fall due. Such bills shall be supported by appropriate and certified vouchers or explanations, to enable the Contractor properly identify such claims. Such claims shall be paid by the Contractor within 15 (fifteen) Days of the receipt of the corresponding bills and if not paid by the Contractor within the said period, the Owner/Project Manager may the deduct the amount, from any monies due or becoming due by him to the Contractor under the Contract or may be recovered by actions of Law or otherwise, if the Contractor fails to satisfy the Owner/Project Manager of such claims.

11.10.2 Owner/Project Manager shall have the right to withhold from any payment due to Contractor, including the final payment, such amounts as Owner/Project Manager reasonably deems necessary or appropriate to protect it because of any one or more of the following reasons:

a) Defects in any Work, which might affect Owner/Project Manager's ability to operate Relevant Package as contemplated herein, whether or not payment has been made thereof;

b) The filing of any vendor / tradesman's lien or similar encumbrance in respect of the Work or the Relevant Package (or any portion thereof);

c) A dispute as to the accuracy or completeness of any request for payment received by Owner/Project Manager within 90 Days of receipt thereof or payment made there under;

d) Contractor's failure to deliver any Performance Securities to Owner/Project Manager

e) Any requirement in accordance with Applicable Laws to withhold any Taxes payable by Contractor in respect of the Goods/Work or any part thereof;

f) Contractor's failure to make payments to its Sub-contractors or Workers for Work or supply of Goods or to any statutory & Regulatory authority including amounts withheld by Contractor because of disputes between Contractor and such Persons.

g) Any legal cases, litigations pending against the Contractor or against the Owner/Project Manager but relating to the Works or Contractor's obligations under the Contract.

h) Any breach of the Contract by the Contractor.

11.10.3 In addition to the provisions of the clause 11.10.1 which relates to the recovery by the Owner/Project Manager of any amounts that the Owner/Project Manager may have paid, for which the Contractor is liable under the Contract, the Owner/Project Manager shall also be entitled to recover all the dues in terms of the Contract including Liquidated Damages for delay, Liquidated Damages for the shortfall in the guaranteed performance parameters, etc., by way of deductions from the payments due to the Contractor or that may become due to the Contractor in future or from any securities / guarantees under the Contract and / or otherwise.

11.10.4 Notwithstanding any dispute that Contractor may have, and regardless of the basis thereof or grounds thereof, Contractor agrees that it will, for so long as the Contract has not been terminated diligently proceed with the Works up to Final Performance Acceptance and final Take-over of Relevant Package, all in accordance with the terms of the Contract.

11.10.5 Any payment due to Owner/Project Manager by the Contractor and remaining unpaid beyond the stipulated date shall be liable to interest payment 100 (hundred) basis points above the short-term Prime Lending Rate of State Bank of India Marginal Cost of the Fund-Based Lending Rate (SBI MCLR) for a tenure of 1 year from the date of due to Owner/Project Manager to the date of receipt of dues from Contractor by Owner/Project Manager.

11.10.6 Idle time charges for any reason whatsoever shall not be borne by the Owner.

11.11 **Punch List Items:**

Contractor shall perform all Work required or appropriate for all Punch List Items within a Schedule to be mutually determined by Contractor and Owner/Project Manager after submission of the Final Request for take-over. Such Schedule shall provide for completion of all Punch List Items as soon as practicable following determination of the completion schedule, but no later than the date set forth by Owner/Project Manager. Upon completion of the Punch List Items, Contractor may submit to Owner/Project Manager and the Owner's Representative a Request for Final Take-over and shall furnish with such a request a certificate that all Punch List Items have been completed. Owner/Project Manager shall examine and certify claim of Contractor of having satisfactorily attended the punch list items.

11.12 **Dedicated Bank Account / Escrow Account:**

11.12.1 The Contractor shall maintain a separate account with a Scheduled Commercial Bank for the purpose of receiving all the payments under the Contract and for utilization of payments received from the Owner for disbursement to its sub- contractors. This could be an Escrow Account opened and governed under a tripartite agreement between the Contractor, the Owner and the Bank if required by the Owner / Project Manager.

The Contractor shall maintain separate books of accounts for all payments under this Contract and Owner/Project Manager shall have access to these books of accounts at all times.

11.12.2 Account Tracking Mechanism:

In case the contractor wants to withdraw funds from the above bank account for any purpose other than the contract, he shall be required to submit an undertaking to the project manager certifying that all due statutory payments, labour payments and payments to all his sub-contractors have been disbursed corresponding to the total payment received by him under the contract

11.12.3 For tracking of payments received from the employer, the Contractor shall also submit a monthly statement by 7th of every month certifying the transactions pertaining to the above account along with the purpose of such transactions. In case, the Contractor transfers the funds for any purposes

other than the Contract, without prior consent of the Owner, it will constitute a breach of Contract by the Contractor

11.12.4 In case the Contractor violates any of the above provisions, Owner shall have the right to give suitable instructions to the bank to regulate/ freeze the account.

12.0 CHANGE ORDERS

A Change Order shall be issued by the Owner/Project Manager in accordance with this clause, when either Owner/Project Manager or Contractor proposes to make any change in the Scope, Services, the Contract Price, the Performance Guarantees and/or the Schedule.

12.1 **Further Detailing not a Change Order**

Contractor's performance of Services shall be subject to further detailing from time to time and Contractor shall receive no additional compensation for such detailing to the extent that such detailing does not constitute a Change Order.

Notwithstanding GCC, no change made necessary because of any default of the Contractor in the performance of its obligations under the Contract shall be deemed to be a Change, and such change shall not result in any adjustment of the Contract Price or the Time for Completion.

12.2 **Right to Change Order**

12.2.1 Change Orders may be initiated by the Owner/Project Manager/Owner's Representative at any time during the Contract Period, either by instruction or by a request (the "Change Order Notice") to the Contractor to submit a proposal. If the Owner/Project Manager/Owner's Representative requests the Contractor to submit a proposal and subsequently elects not to proceed with the change, the Contractor shall not be reimbursed for the Cost incurred for proposal.

12.2.2 The Contractor shall not make any alteration and/or modification of the Services unless and until the Owner/Project Manager/Owner's Representative instructs or approves a Change Order in Writing.

12.2.3 Change Orders may be requested by the Contractor (the "Change Order Request") (i) in case its performance of Services is affected by any Change in Laws or any act or omission of the Owner/Project Manager, Owner's Representative or Owner/Project Manager's Other contractors, or (ii) to propose any change which in the Contractor's opinion will reduce the cost of constructing, maintaining or operating the Relevant Package or otherwise be of benefit to the Owner/Project Manager. Provided further that any Change Order Request under sub-para (i) of this clause, the Contractor shall give a written notice promptly but, in any event, not later than 15 days from the date of occurrence of the event failing which Owner/Project Manager shall not be liable for admitting such Change Order Request.

12.3 **Change Order Procedure**

12.3.1 If the Owner/Project Manager/Owner's Representative issues a Change Order Notice, the Contractor shall submit a proposal addressing the following, within fifteen (15) Days or any other period as mutually agreed:

a) Description of the proposed design and/or work to be performed, and a programme for its execution together with supporting details and calculations;

b) The Contractor's proposal for any necessary modifications to the Schedule

c) The Contractor's proposal for any adjustment to the Contract Price, Guaranteed Completion Dates, Performance Guarantees and/or modifications to the Contract.

12.3.2 If the Contractor issues a Change Order Request, the Contractor shall submit a proposal addressing the following:

a) the reasons for the request with supporting details/documents;

b) a description of the design and/or work affected or proposed to be performed, together with programme for execution and other supporting details/calculations;

c) the Contractor's proposal for any necessary modifications to the Schedule;

d) the Contractor's proposal for any adjustment to the Contract Price, Guaranteed Completion Dates, Performance Guarantees and/or modifications to the Contract.

12.3.3 The Owner/Project Manager/Owner's Representative shall respond with approval, rejection or comments within a period to be mutually agreed after receipt of such proposals.

12.3.4 If the Owner/Project Manager/Owner's Representative instructs or approves in Writing a Change Order, the parties shall proceed with adjustments to the Contract Price, Schedule of Payments, Performance Guarantees and/or Guaranteed Time for Completion.

12.3.5 Contractor shall not suspend performance of this Contract during review and negotiation of any Change Order, except as may be directed by Owner/Project Manager or required by Applicable Law.

12.3.6 Payment in respect of the approved Change Orders shall be released by the Owner/Project Manager to the Contractor on satisfactory completion of such Change Order and its certification by the Owner's Representative in the same manner as applicable to corresponding milestone payments under the Contract.

12.4 **New Items / Extra Items**

12.4.1 New Items / Extra items if any shall be paid on cost plus basis. The cost of item shall be determined as per the actual cost incurred (bills produced) for only he direct materials, labour, machinery utilisation for the said extra items subject to the cost / bills produced to be reasonable as per the prevailing market rates. The Contractor shall be paid 15 (fifteen) percent of the cost so derived towards the overheads and profits. These overhead & profit charges shall be deemed to include all the site infrastructure and management related costs e.g. construction power/water, project management, safety & PPE, general tools & tackle, employee accommodation etc. and shall not form part of any cost breakdown structure. Cost of materials will not be added for calculation of overheads/profits to the extent provided as a free issue material by the Owner/Project Manager. For such extra items, the Contractor shall maintain time sheets of personnel engaged and logbook of machinery utilisation for execution of such items and get them certified by the Owner/Project Manager. Only such labour and equipment cost as supported with the above records, which in the opinion of the Owner/Project Manager is reasonable and justified, shall be taken into account to determine the extra item rate.

12.4.2 Analogous items not covered in the Schedule of Price / Quantities but are of similar construct or nature to the items already covered in the Schedule of Price / Quantities shall be paid for at rates worked out on the basis of cost breakup of rates already agreed for such similar items already covered in the Schedule of Price / Quantities. The Contractor shall furnish a cost break-down structure of all the major items (using the Pareto principle) under the Contract execution matching the agreed rates at the beginning of the Contract. This cost breakdown of items -up shall form the basis of deriving the price for the analogous items.

13.0 TERMINATION BY THE OWNER/PROJECT MANAGER

13.1 **Termination for Convenience**

The Owner/Project Manager shall be entitled to terminate the Contract at the Owner/Project Manager's convenience, at any time by giving thirty (30) Days prior notice to the Contractor. Such notice of termination shall specify that termination is for Owner/Project Manager's convenience and the date upon which such termination becomes effective. Upon receipt of such notice, the Contractor shall proceed as follows:

(i) cease all further work, except for such work as may be necessary and instructed by the Owner/Project Manager/Owner's Representative for the purpose of making safe or protecting those parts of the Services already executed, and any work required for leaving the Site in a clean and safe condition;

(ii) stop all further sub-contracting or purchasing activity, and terminate all Sub-contracts except those to be assigned to the Owner/Project Manager pursuant to paragraph (vi) below;

(iii) handover and transfer the title of ownership to the Owner of all Design, Documents, Manuals equipment, materials and spares relating to the Relevant Package prepared by the Contractor or procured from other sources up to the date of termination for which the Contractor has received payment equivalent to the value thereof;

(iv) handover and transfer the title of ownership to the Owner of those parts of the Relevant Package executed by the Contractor up to the date of termination; and

(v) remove all Contractor's Equipment, which is on Site and repatriate all his staff and labour from the Site.

(vi) to the extent legally possible, assign to the Owner/Project Manager all rights, title and benefit of the Contractor to the Relevant Package as on date of termination and, as may be required by the Owner/Project Manager, in any sub-contracts concluded between the Contractor and its Sub-contractors.

Upon termination, the Contractor shall:

a) Cease all further Work, except for such Work as may be necessary and instructed by the Owner/Project Manager/Owner's Representative for the purpose of making safe or protecting those parts of the Works already executed, and any Work required to leave the Site in a clean and safe condition,

b) Handover and transfer the title of ownership to the Owner all Design Documents, Construction Documents, Manuals, equipment, Materials and spares for which the Contractor has received payment,

c) Hand over and transfer the title of ownership to the Owner those other parts of the Works executed by the Contractor up to the date of termination, and

d) Remove all Contractor's equipment, which is on the Site and repatriate all his staff and labour from the Site.

e) to the extent legally possible, assign to the Owner/Project Manager all rights, title and benefit of the Contractor to the Relevant Package as on date of termination and, as may be required by the Owner/Project Manager, in any sub-contracts concluded between the Contractor and its Sub-contractors.

The Owner/Project Manager shall return the initial Advance Bank Guarantee and Contract Performance Security, (except to the extent required for the surviving obligations of the Contractor) and shall pay the Contractor an amount calculated and certified in accordance with clause 17.6 and Sub-contractor cancellation charges if any.

13.2 **Termination for Default by Contractor**

13.2.1 Notice to Correct

If the Contractor fails to carry out any of his obligations, or if the Contractor does not execute the Services in accordance to the Contract, the Owner/Project Manager/Owner's Representative may give notice to the Contractor requiring him to make good such failure. The Contractor shall remedy the same or take reasonable action to remedy the same within fifteen (15) Days from date of such notice.

If the Contractor:

a) fails to comply with a notice under sub-clause 13.2.1, or

b) abandons or repudiates the Contract, or

c) without reasonable excuse fails to commence or proceed with the Services in accordance with the Contract, or

d) becomes bankrupt or insolvent, goes into liquidation, has a receiving or administration order made against him, compounds with his creditors, or carries on business under a receiver, trustee or manager for the benefit of his creditors, or if any act is done or event occurs which (under any Applicable Law) has a similar effect to any of these acts or events, or

e) assigns the Contract without the required consent of Owner/Project Manager, or

f) fails to comply with Applicable Laws and/or Applicable Permits, or

g) is in material breach of the Contract,

h) fails to comply with Tata Power's Safety Terms & Conditions annexed as Appendix to this GCC

then the Owner/Project Manager may, without prejudice to any other right or remedy Owner/Project Manager may have under the Contract after having given thirty (30) Days' notice to the Contractor, terminate the Contractor's employment under the Contract, should Contractor fail to rectify within such notice period or commence to rectify the defaults within fifteen (15) Days of receipt of such notice from Owner/Project Manager; provided always that in the case of paragraph (d) above, the termination shall become effective on Owner/Project Manager issuing the notice of termination.

Without prejudice to the foregoing, the amount of Liquidated Damages for Delay for which the Contractor would be otherwise become liable under clause 9.1 exceeds the aggregate cap referred to in clause 16.2.1 (i), then Owner shall at any time thereafter be entitled (but not obliged) by notice forthwith to terminate the employment of the Contractor

Upon termination, Owner/Project Manager shall automatically without the necessity of any further action by the Contractor stand subrogated to the interests of Contractor in or under any Sub-contracts. Owner/Project Manager shall succeed Contractor in all Sub-contracts and the Owner/Project Manager shall compensate the Sub-contractors under such Sub-contracts the compensation becoming due and payable under their agreements with the Contractor from and after the date Owner/Project Manager decides to succeed to the interests of the Contractor. The Contractor shall simultaneously deliver all Documents relating to the Relevant Package prepared by the Contractor or procured from other sources up to the date of termination to the Owner/Project Manager. Upon termination, if requested by Owner/Project Manager, Contractor shall withdraw from the Site and shall remove as directed by Owner/Project Manager any debris or waste materials (including any hazardous substances) generated by Contractor in performance of the Services.

Owner/Project Manager may take possession of any and all materials, documents, purchase orders, correspondence and schedules that Owner/Project Manager deems necessary to

complete the Relevant Package. The Owner/Project Manager is also free to take possession of and use Contractor's Equipment at Site free of any cost. The rights and authorities conferred on the Owner/Project Manager and the Owner's Representative by the Contract shall not be affected by such termination.

The Contractor shall not be released from any of his obligations or liabilities accrued under the Contract. For the avoidance of doubt, the termination of the Contract in accordance with this clause shall neither relieve the Contractor of his accrued obligations for Warranty or Latent Defects or his accrued liability to pay Liquidated Damages for Delay and/or Performance nor shall entitle him to reduce the value of Contract Performance Security.

13.2.2 The Owner/Project Manager may upon such termination complete the Relevant Package himself and/or by employing any other contractor. The Owner/Project Manager or such other contractor may use for such completion such of the Documents made by or on behalf of the Contractor, Contractor's Equipment, Temporary Works, plant and materials as he or they may think proper. Upon completion of the Services, or at such earlier date as the Owner/Project Manager/Owner's Representative thinks appropriate, the Owner/Project Manager/Owner's Representative shall give notice that the Contractor's Equipment and Temporary Works will be released to the Contractor at or near the Site. The Contractor shall remove or arrange removal of the same from such place without delay and at his cost.

13.2.3 Upon termination, if Owner/Project Manager is of the opinion that he is not able to complete the Relevant Package himself or with the help of other contractors, then he may reject the incomplete Works. In such an event the Owner/Project Manager shall recover all money paid by the Owner/Project Manager to the Contractor for the incomplete /rejected Relevant Package. The Contractor shall also dismantle and dispose of the rejected/incomplete Works and also clear the Site at his cost. If he fails to do so, the Owner/Project Manager will dismantle and dispose of the rejected incomplete Relevant Package and clear the Site at Contractor's Cost and risk and recover all expenses incurred in this regard from the Contractor.

13.3 **Payment after Termination**

13.3.1 After termination under clause no. 13.2 above, the Contractor shall not be entitled to any further payment under the Contract, except that, if Owner/Project Manager completes the Relevant Package and the costs of completion are less than the Contract Price, the Owner/Project Manager shall pay Contractor an amount properly allocable to Services fully performed by Contractor prior to termination for which payment was not made to Contractor or a Sub-contractor, upon completion of the Relevant Package by Owner/Project Manager.

13.3.2 The Owner/Project Manager shall be entitled to recover from the Contractor the extra costs, if any, of completing the Works. In addition, Owner/Project Manager shall be entitled to exercise any rights or remedies available to Owner/Project Manager hereunder or at law or in equity.

14.0 INDEMNIFICATION

14.1 **General Indemnity**

14.1.1 Contractor shall fully indemnify, save & hold harmless, defend and keep indemnified Owner/Project Manager, Owner/Project Manager's shareholders, the Owner's Representative, and the directors, agents, officers and employees of the Owner/Project Manager (the "Owner's Indemnified Parties") from and against any and all claims, including reasonable legal costs, (collectively the "Damages") in respect of death or bodily injury or in respect to loss or damage to any property of Owner or any other third parties which arises out of or in consequence of the Contract whilst the Contractor has responsibility for the care of the Works to the extent resulting from Contractor's or any Sub-contractor's or their agents

or employees intentional act, negligence, or strict liability or omission in the performance of the Contract; provided that the foregoing obligation shall not apply to the extent the Owner's Indemnified Parties are negligent or strictly liable or to the extent such damages are caused by the intentional acts or omissions of the Owner's Indemnified Parties.

14.1.2 Owner/Project Manager shall fully indemnify, save & hold harmless and defend Contractor and its shareholders and the directors, agents and employees of the Contractor (the "Contractor Indemnified Parties"), from and against any and all claims, including reasonable legal costs, (collectively the "Damages") by third parties in respect of death or bodily injury or in respect to loss or damage to any property which arises out of or in consequence of the execution of the Project to the extent caused by Owner/Project Manager's or Owner's Other Contractor's strict liability, intentional act or omissions or negligence; provided that the foregoing obligation shall not apply to the extent the Contractor Indemnified Parties are contributory negligent or strictly liable or to the extent such damages are caused by the intentional acts or omissions of the Contractor Indemnified Parties.

14.2 **Specific Indemnification**

14.2.1 Contractor shall fully indemnify, save and hold harmless Owner/Project Manager Indemnified Parties from and against any claim, demand, liability, action, proceedings, cost or expense by any third party with respect to:

a) Failure of Contractor, any Sub-contractor or any of their respective Sub-contractors to comply with Applicable Laws and Applicable Permits, Prudent Utility Practices and Good Engineering Practices.

b) Failure of Contractor to make payments of taxes relating to Contractor's, any Sub-contractor's income or other taxes required to be paid by Contractor pursuant to this Contract irrespective of whether they are reimbursable or to be compensated under the terms of this Contract.

c) Any Hazardous Materials of Contractor, any Sub-contractor, or any of their respective Sub-contractors which has at any time been brought on and has been caused to be released thereof on or from the Site or for which any of them is responsible by law or in the Contract.

d) Failure of Contractor to protect the environment (both on and off the Site) in accordance / compliance with the applicable environmental laws along with its amendments/modifications from time to time.

14.2.2 Owner/Project Manager shall fully indemnify, save harmless and Contractor Indemnified Parties from and against Damages in favour of any third party with respect to:

a) Failure of Owner/Project Manager or any of its Other Contractors to comply with Applicable Laws and Applicable Permits.

b) Any Hazardous Materials of Owner/Project Manager, or any of its Other Contractors (other than Offshore Supply Contractor, Onshore Supply Contractor, and Onshore Services Contractor, and the Sub-contractors) has brought on and caused the release thereof from the Project Site.

14.3 **Intellectual Property (IP) Indemnification**

14.3.1 In performing the Services, Contractor shall not incorporate into the Relevant Package, or use in connection with the Relevant Package or the performance of the work, any materials, methods, processes, systems or service that involve the use of any confidential information, intellectual property or proprietary rights that Contractor does not have the right to use or incorporate or which may result in claims or suits against Owner/Project Manager, Contractor or any Sub-contractor arising out of claims of infringement of any third party, domestic or foreign patent rights, copyrights, other proprietary rights, or intellectual

property rights, licenses or agreements, or applications for any thereof, or rights of use of confidential information.

14.3.2 The Contractor shall retain the copyright and other Intellectual Property Rights in the Contractor's Documents and other design documents independently made by (or on behalf of) the Contractor. The Contractor shall be deemed to give to the Owner/Project Manager a perpetual non-terminable, non-exclusive, transferable royalty-free licence to copy, use and communicate the Contractor's Documents, including making and using modifications of them. This licence shall:

a) be valid throughout the actual or intended working life (whichever is longer) of the relevant parts of the Works,
b) entitle any person in proper possession of the relevant part of the Works to copy, use and communicate the Contractor's Documents for the purposes of completing, operating, maintaining, altering, adjusting, repairing and demolishing the Works, and
c) in the case of Contractor's Documents which are in the form of computer programs and other software, permit their use on any computer on the Site and other places as envisaged by the Contract, including replacements of any computers supplied by the Contractor.
d) be used for any other purposes related to the Relevant Package / Work.

14.3.3 Contractor shall fully indemnify and save harmless and defend the Owner Indemnified Parties from and against any and all damages or loss that the Owner's Indemnified Parties may suffer, incur or pay by reason of any claims or suits arising out of claims of infringement of any patent rights, copyrights or other intellectual property, proprietary or confidentiality rights with respect to equipment, designs, techniques, processes and information designed or used by Contractor or any sub-Contractor in performing the Work or supply of Goods hereunder or under the Sub-Contracts in any way incorporated in or related to the Project other than any such equipment, designs, techniques, processes and information provided by the Owner Indemnified Parties.

14.3.4 If, in any suit or claim relating to the foregoing, a temporary restraining order or preliminary injunction is granted, Contractor shall make every effort to secure the suspension of the injunction or restraining order. If, in any such suit or claim or any part, combination or process thereof, is finally held to constitute an infringement and its use is permanently enjoined, Contractor shall promptly make every reasonable effort to secure for Owner/Project Manager a license, at no Cost to Owner/Project Manager, authorising continued use of the infringing Goods or Work. If Contractor is unable to secure such license within a reasonable time so as to not affect the Project Contractual Time for Completion, Contractor shall, at its own expense and without impairing performance requirements, either replace the affected Goods or Work, or part, combination or process thereof with non-infringing components or parts or modify the same so that they become non-infringing.

14.3.5 Final payment to the Contractor by the Owner/Project Manager will not be made while any such suit or claim remains unsettled.

14.4 **Notice and Legal Defence**

14.4.1 Promptly after receipt by a party of any claim or Notice of the commencement of any action, administrative or legal proceeding, or investigation as to which the indemnities provided may apply, such Party shall notify the other Party in Writing of such fact provided that the failure of a Party to give any such Notice promptly shall not excuse the indemnifying party from its indemnification obligations hereunder except to the extent any such failure actually prejudices the indemnifying Party in the defence of such matters.

14.4.2 The indemnifying Party shall assume on behalf of the indemnified Party and conduct with due diligence and in good faith the defence thereof with counsel reasonably satisfactory to

the indemnified Party; provided that the indemnified Party shall have the right to be represented therein by advisory council of its own selection and at its own expense; and provided, further, that if the defendants in any such action include both the indemnifying Party and the indemnified Party and the indemnified Party shall have reasonably concluded that there may be legal defences available to it which are different from or additional to, or inconsistent with, those available to the indemnifying Party, the indemnified Party shall have the right to select separate counsel to participate in the defence of such action on its own behalf at the indemnifying Party's expense.

14.4.3 The indemnified Party shall, at the request of the indemnifying Party, provide all reasonably available assistance in the defence or settlement of any such claim, action, proceeding or investigation, and all reasonable costs and expenses incurred by the indemnified Party in connection with the defence or settlement of any such claim, action, proceeding or investigation shall be reimbursed by the indemnifying Party promptly upon demand thereof. The indemnified Party shall not settle or compromise any claim, action or proceeding without the prior Written consent of the indemnifying Party such consent not to be unreasonably withheld.

14.5 **Failure to Defend Action**

If any claim, action, proceeding or investigation arises as to which the indemnities provided may apply, and the indemnifying Party fails to assume the defence of such claim, action, proceeding or investigation, then the indemnified Party may at the indemnifying Party's expense contest or settle such claim.

14.6 **Survival: Expiration of Indemnity**

The provision of this Clause 14.0 shall survive final acceptance or the termination of this Contract; provided that neither Party shall have any indemnity obligations pursuant to this Clause 14.0 for any claim arising out of or resulting from events or circumstances occurring after the termination of this Contract or after the expiration of the Latent Defect Liability Period; and provided further that neither Party shall have any indemnity obligation pursuant to this Clause 14.0 unless notice of any such claim for indemnity by either Party is received by the indemnifying Party prior to the date that is three (3) years after the expiration of the Latent Defect Liability Period.

15.0 CONTRACTOR'S CARE OF THE WORKS

15.1 The Contractor shall take full responsibility for the care of the Works from the Effective Date until the date of issue of the Certificate of Take-over when responsibility shall pass to the Owner/Project Manager. If the Owner's Representative issues a Certificate of Take-over for part of the Works, the Contractor shall cease to be responsible for the care of that part from the date of issue of such Certificate of Take-over when responsibility shall pass to the Owner/Project Manager.

15.2 The Contractor shall take responsibility for the care of any outstanding Work or obligations which is required to be completed/ fulfilled prior to the expiry of the Contract Period, until the Owner's Representative confirms in Writing that such outstanding Work or obligation has been completed/fulfilled.

15.3 If any loss or damage happens to the Relevant Package, during the period for which the Contractor is responsible, the Contractor shall rectify such loss or damage, at his cost, so that the Works conform with the Contract. The Contractor shall also be liable for any loss or damage to the Works caused by operations carried out by the Contractor after the date of issue of the Certificate of Take-over until the expiry of the Contract Period in so far as such loss or damage is not covered under Insurance to be taken by the Owner/Project Manager for operation of Plant.

16.0 LIMITATION OF LIABILITY

16.1 **No consequential Damages, etc.**

Except for any specific liability which may be identified in the Contract and which may be payable hereunder, Contractor shall not be liable for any special, incidental, indirect, or consequential damages or any loss of business Contracts, revenues or other financial loss (or equivalents thereof no matter how claimed, computed or characterised) arising out of or in connection with the Performance of the Work or supply of Goods unless caused by Contractor's negligence or wilful misconduct. In addition, Owner/Project Manager shall have no liability or any special, incidental, indirect or consequential Damages for any loss of business Contracts, revenues or other financial loss arising out of this Contract.

16.2 **Limitation of Liability**

16.2.1 Contractor's liability under the Contract shall be limited to

(i) with respect to delay in achieving the Guaranteed Completion Dates, the Liquidated Damages for Delay shall be ten percent (10%) of the Contract Price.

(ii) with respect to shortfall in Performance Guarantees, the Performance Liquidated Damages shall be as stated in the SCC/Technical Specifications;

16.2.2 Not used

16.2.3 Payment of the above Liquidated Damages for Delay shall not affect or prejudice in any way or manner, the Owner/Project Manager's right to terminate the Contract and also any termination of Contract shall not prejudicially affect the Owner/Project Manager's right to recover any accrued Liquidated Damages for Delay or release the Contractor from any obligation for payment thereof.

16.3 **Maximum Liability**

The Contractor's aggregate liability under or arising out of or in connection with this Contract, its performance or breach shall be limited to the Contract Price. This limitation of liability shall, however, exclude:

a) Losses, damages, or claims arising out of wilful misconduct, misrepresentations, negligence, sabotage, fraudulent and/or corrupt acts of the Contractor's or any Sub-contractor's or their agents in the performance of the Contract.
b) General indemnification, specific indemnification, IP indemnification pursuant to provisions under Clause 14.0 and sub-clauses thereunder.
c) Indemnities pursuant to Clause 1.11.2 or any other indemnity provisions under the Contract.

16.4 **Exclusive Remedies**

The Owner/Project Manager's and Contractor's remedies and liabilities that are identified in this Contract shall be the sole and exclusive remedies available to the Parties in respect of matters to which they are said to relate in this Contract irrespective of any rights and remedies which might be available at common law, in tort (including negligence), by statute or otherwise.

17.0 FORCE MAJEURE

17.1 **Definition of Force Majeure**

"In this Clause, "*Force Majeure"* shall mean an event or circumstance beyond the reasonable control of the Owner/Project Manager or the Contactor which could not have been foreseen, prevented or mitigated by such Party using its reasonable diligence and which

makes it impossible for such Party to perform the whole or in part its obligations under the Contract, including but not limited to:

a) Act of God;

b) An act of war, (whether declared or undeclared) hostilities invasion, armed conflict or an act of foreign enemies, blockade, embargo, revolution, military action, or sabotage.

c) Contamination by radioactivity from any nuclear fuel, or from any nuclear waste from the combustion of nuclear fuel, radioactive toxic explosive, or other hazardous properties.

d) Riot, civil commotion, terrorism or disorder, unless solely restricted to employees of the Contractor or of his Sub-contractors.

e) National or regional industrial disputes or targeted disputes which are part of national or regional campaign, and which is not reasonably within the powers of a Party to prevent, or which is not specific to the Party or any of his Contractors or Sub-contractors.

f) Operation of the forces of nature such as earthquake, hurricane, lightning, tidal wave, tsunami, typhoon or volcanic activity.

g) Any epidemic / pandemic to the extent declared as Force Majeure by respective local administrative / statutory body to the extent directly impacting the affected parts of the Contract.

17.2 **Excused Performance**

If either Party is rendered wholly or partially unable to perform its obligations under this Contract because of a Force Majeure Event, that party will be excused from whatever performance is affected by the Force Majeure event to the extent so affected provided that:

a) The affected Party gives the other Party Written Notice of the occurrence of the Force Majeure Event as soon as practicable after the occurrence of the Force Majeure Event and also gives the other Party Written Notice describing in reasonable detail the particulars of such occurrence, including an estimation of its expected duration and probable impact on the performance of such Party's obligations hereunder, and thereafter continues to furnish thereto timely regular reports with respect to continuation of the Force Majeure Event;

b) The suspension of performance shall be of no greater scope and of no longer duration than is reasonably required by the Force Majeure.

c) No liability of either Party which arose before the occurrence of the Force Majeure Event causing the suspension of performance shall be excused as a result of the occurrence.

d) The affected Party shall exercise all reasonable efforts to mitigate or limit Damages to the other Party.

e) The affected Party shall use its best efforts to continue to perform its obligations hereunder and to correct or cure the event or condition excusing performance;

f) When the affected Party is able to resume performance of its obligations under this Contract, that Party shall give the other Party Written Notice to that effect and shall promptly resume performance hereunder.

17.3 **Limitations**

Anything in this Contract to the contrary notwithstanding.

a) Any act, event, or occurrence listed above or asserted as a Force Majeure Event that results materially from the negligence or intentional acts of the affected party (including in the case of Contractor or any Sub-contractor thereof) shall not constitute a Force Majeure Event; and

b) The affected Party shall not be relieved from obligations under this Contract to the extent that the negligence or wilful misconduct of the affected Party (or in the case of Contractor or any Sub-contractor thereof) contributes to or aggravates the Force Majeure Event.

17.4 **Effect of Force Majeure Event**

Neither the Owner/Project Manager nor the Contractor shall be considered in default or in Contractual breach to the extent that performance of obligations is prevented by a Force Majeure Event, which arises after the Effective Date. Except as otherwise provided in a Change Order, an extension of time shall be granted to Contractor only to the extent Contractor proves to Owner/Project Manager;

a) The performance of the Work or supply of Goods is actually and necessarily delayed by an event of Force Majeure and

b) The effect of such event of Force Majeure could not have been prevented or avoided or removed despite exercise of reasonable due diligence whether before, after or during the event of Force Majeure.

17.5 **Payment to Contractor**

If, in consequence of Force Majeure, the Plant or any part thereof shall suffer loss or damage, the Contractor shall be entitled to claim and receive payment for the cost of Work or supply of Goods executed in accordance with the Contract, prior to the event of Force Majeure.

17.6 **Optional Termination, Payment and Release**

Irrespective of any extension of time, if a Force Majeure event occurs and its effect continues for a prolonged period, the Partiers may mutually agree to terminate the Contract. If the Contract is terminated under this clause no. 17.6 or under clause no. 13.1, the Owner/Project Manager shall determine the work done and pay to the Contractor.

a) The amounts payable for any Work or supply of Goods carried out for which a Price is stated in the Contract;

b) The cost of Relevant Package and Materials ordered for the Works which have been delivered to the Contractor, or of which the Contractor is liable to accept delivery: such Plant and Materials shall become the property of (and be at the risk of) the Owner/Project Manager against payment therefore by the Owner/Project Manager, and the Contractor shall place the same at the Owner/Project Manager's disposal promptly upon receipt of request in respect thereof from the Owner/Project Manager.

18.0 CLAIMS, DISPUTES, MUTUAL SETTLEMENT & ARBITRATION

18.1 **Procedure for Claims**

18.1.1 If the Contractor or Owner/Project Manager intends to claim any additional payment under any clause of these conditions, the Party claiming shall give Notice to the other Party or as soon as possible and in any event within 30 (thirty) Days of the start of the event giving rise to the claim.

18.1.2 Within 30 (thirty) Days of such Notice, or such other time as may be agreed, the Party claiming shall send to the other Party an account, giving detailed particulars of the amount and basis of the claim along with the necessary supporting documentation. Where the event

giving rise to the claim has a continuing effect, such account shall be considered as interim. The Party claiming shall then, at such intervals as the other Party may reasonably require, send further interim accounts giving the accumulated amount of the claim and any further particulars. Where interim accounts are sent to the other Party, the Party claiming shall send a final account within 15 Days of the end of the effects resulting from the event.

18.1.3 If the Party claiming fails to comply with this clause no. 18.1.2, he shall not be entitled to any additional claim and shall be deemed to have waived the same.

18.2 **Mutual Settlement**

18.2.1 Any disputes or differences arising out of or in connection with the Contract shall, to the extent possible, be settled amicably between the Parties.

18.2.2 If any dispute or difference of any kind whatsoever shall arise between Owner/Project Manager and Contractor, arising out of the Contract for the performance of the Works whether during the progress of Works or after its completion or whether before or after termination, abandonment or breach of Contract, it shall, in the first place be referred to and settled by Owner's Representative, who within a period of 30 (thirty) Days on request by either Party to do so, shall give written notice of his decision to the Owner/Project Manager and the Contractor.

Save as hereinafter provided, such decision in respect of every matter so referred shall be final and binding upon the Parties until the completion of the entire Works and shall forthwith be given effect to by the Owner/Project Manager and/or the Contractor, as applicable, who shall comply with all such decisions with all due diligence.

If the Owner's Representative has given written notice of his decision to the Parties and no claim to arbitration has been communicated to him by either Party within 30 (thirty) Days from receipt of such notice, the said decision shall become final and binding on the Parties.

In the event of the Owner's Representative failing to notify his decision as foresaid within 30 (thirty) Days after being requested as aforesaid, or in the event of either the Owner/Project Manager or the Contractor being dissatisfied with any such decision, as the case may be, within 30 (thirty) Days after the expiry of first mentioned period of 30 (thirty) Days, as the case may be, either Party may require that the matter in dispute be referred to arbitration as hereinafter provided.

18.2.3 All disputes or differences in respect of which the decision, if any, of the Owner's Representative has not become final or binding as aforesaid, shall be referred within the next 30 (thirty) Days, for resolution by the intervention of the Senior Management of the respective Parties within the next 30 (thirty) Days through mutual agreement.

18.3 **Arbitration**

18.3.1 If the disputes or differences under Clause 18.2.3 herein above are still not resolved, the same shall be referred for arbitration in accordance with the Indian Arbitration & Conciliation Act, 1996, or any statutory modification or enactment thereof for the time being in force on the date of the reference to arbitration.

18.3.2 The Contractor and the Owner/Project Manager will continue to perform their respective obligations under the Contract during the Arbitration proceedings unless such performance itself relates to the dispute referred to Arbitration pursuant to this sub-clause.

18.3.3 The Arbitrator Panel shall consist of 3 (three) arbitrators, one to be appointed by the Owner/Project Manager and Contractor respectively and a third one to be appointed by the two arbitrators so appointed by the Owner/Project Manager and the Contractor and the third arbitrator shall be appointed in accordance with the provisions of the Indian Arbitration and Conciliation Act, 1996. It is to be noted that when one party appoints an Arbitrator, the other party should appoint their Arbitrator within 30 (thirty) Days. The

arbitration shall be held in Mumbai and the courts in Mumbai shall have jurisdiction on any matter connected with any Arbitration under this clause no.22.3.

18.3.4 Arbitration shall be sole and exclusive remedy between the Parties regarding the dispute referred to Arbitration and any claims, counterclaims issues or accountings presented or plead to the arbitrators in connection with such dispute.

18.3.5 The award rendered in any Arbitration commenced hereunder shall be final and conclusive. The award should be implemented and promptly paid.

18.3.6 The Arbitrators shall have full powers to review or revise the decisions, opinions, certifications or valuations of the Owner's Representative. The Owner/Project Manager and the Contractor hereby undertake to carry out the award without delay. The expenses of Arbitration shall be paid as may be determined by the arbitrators. They may from time to time, with the consent of the Parties, enlarge the time for making the award. In case of aforesaid arbitrators dying, neglecting, resigning or being unable to act for any reason, it will be lawful for the Parties to nominate another arbitrator with mutual consent of both the parties.

18.3.7 No decision of the Owner's Representative in accordance with foregoing provisions shall disqualify him as being called as a witness or giving evidence before the arbitrators on any matter whatsoever relevant to the dispute or difference referred to arbitrators as foresaid.

18.3.8 This clause 18.3 shall remain in full force and effect notwithstanding any lawful termination of the Contract where either Arbitration has already commenced or the liabilities between the Owner/Project Manager and the Contractor have not been fully determined.

19.0 ENFORCEMENT OF TERMS

19.1 The failure of either Party to enforce at any time any of the provisions of this Contract or any rights in respect thereto or to exercise any option therein provided, shall in no way be construed to be a waiver of such provisions, rights or options or in any way to affect the validity of the Contract.

19.2 The exercise by either Party of any of its rights herein shall not preclude or prejudice either Party from exercising the same or any right it may have hereunder.

20.0 REPRESENTATIONS & WARRANTIES

Each Party hereby represents and warrants to the other Party that:

20.1 **Organization, Power and Authority.**

It is duly organized and validly existing under the laws of its jurisdiction of incorporation and is qualified to do business in India/ any other country as specified in SCC, and in all other jurisdictions in which the nature of the business conducted by it makes such qualification necessary, and has all requisite legal power and authority to carry on its business and to execute this Contract and to perform the terms, conditions and provisions hereof.

20.2 **Authorization.**

The execution, delivery and performance by such Party of this Contract have been duly authorized by all requisite corporate action.

20.3 **Enforceability.**

This Contract constitutes the legal, valid and binding obligation of such Party, enforceable in accordance with the terms hereof.

20.4 **No Conflict.**

Neither the execution nor delivery nor performance by such Party of this Contract, nor the consummation of the transactions contemplated hereby, will result in a violation of, or a conflict with, any provision of the organizational documents of such Party; a contravention or breach of, or a default under, any term or provision of any indenture, contract, agreement or instrument to which such Party is a party or by which such Party or its property may be bound, or a violation by such Party of any Law.

20.5 **No Violation of Law.**

It is not in violation of any Law, which violations, individually or in the aggregate, could reasonably be expected to have an adverse effect on it or its performance of any obligations hereunder.

20.6 **Litigation.**

There is no action, suit or proceeding now pending or (to its best knowledge) threatened against it (or any Sub-contractor, in the case of the Contractor) before any court or administrative body or arbitral tribunal that could reasonably be expected to adversely affect the ability of such Party (or any Sub-contractor, in the case of the Contractor) to perform its obligations hereunder (or under any Sub-contract) other than those notified to the Project Company in writing by the Contractor.

20.7 **Contractor's Representations and Warranties.**

The Contractor represents and warrants that:

20.7.1 It has or will be the holder of all Permits required to allow it to operate or conduct its business as contemplated hereby;

20.7.2 It has thoroughly examined this Contract, the Technical Specifications and all applicable Laws and has become familiar with their terms;

20.7.3 It has, and its Sub-contractors have, full experience and proper qualifications to manufacture Equipment and perform the Work and to construct the Relevant Package under the Contract.

20.7.4 It has ascertained the nature and location of all Work to be performed at the Site, the character and accessibility of the Site and its surrounding areas, availability of lay-down areas for Equipment and tools, the existence of obstacles to construction (including any reasonably identifiable underground obstacles, if any, referred to in this Contract), the availability of facilities and utilities, the location and character of existing or adjacent work or structures, the conditions of roads, waterways and railroads in the vicinity of the Site and in the relevant State in India, including the conditions affecting shipping and transportation (such as the limitations of bridges and tunnels), access, disposal, handling and storage of materials, the surface conditions and other general and local conditions, including labour, safety, weather, environmental conditions, geological conditions, if any, noted in this Contract, water supply, water quality, waste water capacity of existing municipal systems and all other matters that might affect its performance of the Work or its costs or the construction of the Relevant Package

20.7.5 All services provided and procedures followed by the Contractor hereunder to engineer, design, procure, construct, commission, start-up and test all the Equipment and other items in the Relevant Package shall be done in a workman-like manner and in accordance with:

a) Prudent Utility Practices, Engineering Standards and the Design Specifications;

b) All applicable requirements of all applicable Laws;

c) All requirements of this Contract; and

d) All instructions of Vendors and manufacturers of Equipment, including instructions relating to storage, erection and testing;

e) Requirements of the latest Gazette of India - CEA Notification Sr. No.211 dated 20th August 2010: – "Technical standards for construction of electrical plants and electric lines;

f) International safety standards & codes for engineering / design;

g) Relevant sustainability standards & codes.

20.7.6 It is familiar with all necessary facilities for delivering, handling and storing all Equipment and other parts of the Work

20.7.7 It is familiar with all labour conditions and agreements relating to the performance of the Work;

20.7.8 It will design the Equipment and Work for Relevant Package so that the useful life thereof may reasonably be expected to 30 (thirty) years;

20.7.9 The Contractor has no reason to believe that any Contractor Permits will not be readily obtainable by the Contractor in the ordinary course of business upon due application thereof;

20.7.10 It has satisfied itself as to the means of communication with and access to and through the Site and accommodations it may require and the precautions and times and methods of working necessary to prevent any Contractor Person from creating any nuisance or interference, whether public or private, which might give rise to any law-and-order problems within or outside the Site.

21.0 SUPPLIER CODE OF CONDUCT:

21.1 Tata Power follows the Tata Code of Conduct (TCoC), Whistle blower Policy and Anti-Bribery & Anti-Corruption Policy and expect all its Contractors / Suppliers including all their employees, agents and other representatives to adhere to the same principles. These policies are available on the following URLs:

Tata Code of Conduct (TCoC): https://www.tatapower.com/pdf/aboutus/Tata-Code-of-Conduct.pdf

Whistle Blower Policy: https://www.tatapower.com/pdf/aboutus/whistle-blower-policy-and-vigil-mechanism.pdf

Anti-Bribery & Anti-Corruption Policy: https://www.tatapower.com/pdf/aboutus/abac-policy.pdf

The Contractors / Suppliers are expected to adhere to the following Do's and Don'ts:

Do's

The Contractor / Supplier shall:

1. be committed to supplying products and services of high quality that meet all applicable standards and laws, including product packaging, labelling and after-sales service obligations.
2. comply with all applicable laws and regulations, both in letter and in spirit, in all the territories in which it operates.
3. strive to provide a safe, healthy and clean working environment for its employees.
4. strive for environmental sustainability, particularly with regard to the emission of greenhouse gases, consumption of water and energy and the management of waste and hazardous materials.
5. shall represent the Company (including Tata brand) only with duly authorised written permission from our company.
6. safeguard the confidentiality on the use of intellectual property, information and data of the Company.
7. ensure gifts and hospitality given or received should be modest in value and appropriate as per Company Policy.
8. ensure the assets of Tata Power shall be employed primarily and judiciously for the purpose of conducting the business for which they are duly authorised.
9. ensure all actual or potential conflicts due to financial or any other relationship with a Tata Power employee shall be disclosed.

Don'ts

1. The Contractor / Supplier shall not make unfair or misleading statements about the products and services of competitors.
2. Children shall not be employed at workplaces.
3. Forced labour shall not be used in any form.
4. The Contractor / Supplier shall neither receive nor offer or make, directly or indirectly, any illegal payments, remunerations, gifts, donations or comparable benefits that are intended, or perceived, to obtain uncompetitive favours for the conduct of its business with Tata Power.

Reporting Violations

The Contractor/Supplier shall notify the Owner/Company regarding any known or suspected improper behaviour of other suppliers or employees relating to its dealings with Tata Power, by email to: cecounsellor@tatapower.com.

The same can also be raised through our 3rd party ethics helpline facility:

Toll-free Number	1800 267 4065
Email	tatapower@tip-offs.in
Website & Chatbot	www.tatapower.tip-offs.in
Postal address	Attn to: Mr. Puneet Arora, Deloitte Touch Tohmatsu India LLP, 6 floor, AIPL Business, Sector 62, Gurugram, Haryana 122102

21.2 If the Contractor/Supplier, or any of its Sub-contractors, agents or servants gives or offers to give or promises to give to any Person any bribe, gift, gratuity or commission as an inducement or reward:

a) For doing or forbearing to do any action in relation to the Contract, or

b) For showing favour or disfavour to any Person in relation to the Contract

or found violating any of the principles of the Supplier Code of Conduct as enumerated above, then the Owner/Project Manager may, after having given 15 (fifteen) Days' Notice to the Contractor, terminate the Contractor's employment under this Contract and also expel him from the Site. The effects of termination contained in clause 13.2 shall apply mutatis mutandis to the termination under this clause including recovery of any loss or damage to the Owner/Project Manager resulting from any such action of giving / offering bribe from final settlement. In addition, it will also be subjected to any criminal liability under Applicable Law.

22.0 MISCELLANEOUS

22.1 **Non-Waiver**

Neither Party shall be deemed to have waived any right under this Contract unless such Party shall have delivered to the other Party a written waiver signed by such waiving Party. No failure or successive failure by either Party to enforce any covenant or agreement, and no waiver or successive waivers by either party of any condition of this Contract, shall operate as a discharge of such covenant, agreement or condition, or render the same invalid, or impair such Party's right to enforce the same in the event of any subsequent breach thereof by the other Party.

22.2 **Severability**

If any of the terms, covenants or conditions hereof or the application of any such term, covenant or condition shall be held invalid or unenforceable as to either Party or as to any circumstance by any court or arbitrator having jurisdiction, the remainder of such terms, covenants or conditions shall not be affected thereby, shall remain in full force and effect and shall continue to be valid and enforceable in any other jurisdiction. In such event, the Parties shall negotiate in good faith to substitute a term, covenant or condition in this Contract to replace the one held invalid or unenforceable by a mutually agreed amendment to this Contract with a view toward achieving a valid and enforceable legal and economic effect as similar as is then reasonably possible to that originally provided for in this Contract.

22.3 **Survival of Provisions**

In order that the Parties may fully exercise their rights and perform their obligations hereunder arising from the performance of the Work, such provisions of this Contract that are required to ensure such exercise or performance shall survive the termination of this Contract for any cause whatsoever.

22.4 **Entire Agreement**

This Contract constitutes the entire agreement and contains all of the understandings and agreements of whatsoever kind and nature existing between the Parties, and supersedes, to the extent permitted by Indian law, all prior written or oral agreements, commitments, representations, communications and understandings between the Parties.

22.5 **Amendment**

No amendment, waiver or consent relating to this Contract shall be effective unless it is in writing and signed by the Parties.

22.6 **Successors and Assigns**

All of the terms and provisions of this Contract shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns. This Contract is for the sole benefit of the Parties, and to the extent provided herein, the Indemnitees, and is not for the benefit of any other Person.

22.7 **Counterparts**

This Contract may be executed in one or more counterparts, each of which shall be deemed to be an original and all such counterparts shall together constitute one and the same contract.

22.8 **No Benefit to Third Parties**

For the avoidance of doubt, this Contract is not intended to confer any legally enforceable rights on any Person other than the Parties, their successors in title and their permitted assignees, whether pursuant to the Contracts (Right of Third Parties) Act 1999 or otherwise.

25.9 **Certification**

The Contractor should be SA (8000 or equivalent), ISO 14001 and OHSAS-18001 certified. In the event Contractor does not have the certification, then the Contractor shall immediately apply for and obtain these accreditations before the commencement of Site Works. Owner shall not permit any work at Site unless Contractor presents bonafide evidence towards obtaining these certifications. Time/cost extension shall not be allowed for any delay in Project Schedule due to Contractor's failure in timely obtaining of these accreditations. Contractor must also certify that the handling, use and disposal of the product shall be consistent with sound environment management.

23.0 Sustainability

The Contractor shall abide to the Owner / Project Manager's Corporate Environment Policy, Responsible Supply Chain Management Policy Supplier Code of Conduct and Corporate ESG Framework (enclosed with the tender document).

The Contractor should strive towards Conservation of Energy, Water, Resources and optimize transportation of Men & Materials to minimize environmental impact and reduce carbon footprint.

The Contractor should carry out the assessment of materials used for construction, operation & maintenance, consumables and accordingly phase out those materials which are environmentally hazardous.

The Contractor organization should be SA 8000, ISO 14001 and SA 8000 and OHSAS-18001 certified. If not, the Contractor shall certify that the handling, use and disposal of your product consider practices consistent with sound environment management.

The Contractor shall commit to the human rights principle of no child labour, no forced labour, non-discrimination on the basis of caste, colour, religion, gender, disability and any other factor unrelated to the requirements of the job.

The Contractor shall commit to equal pay for equal value of work, especially for women.

The Contractor shall also carry out assessment of their Sub-contractors on their sustainability readiness so that they comply with the above-mentioned standards.

24.0 Total Compliance to TCOC, SHE and Contractor Safety Terms & Conditions

The Contractor shall abide by and comply in totality with the latest versions of Owner / Project Manager's Safety, Health & Environment policies, Contractor Safety Terms & Conditions, Sustainability and TCOC manuals / documents as enclosed with the tender or as amended by Owner from time to time.

25.0 Novation

Owner shall have the right to novate the Contract at its sole discretion to any Tata Group Companies including associates and subsidiaries thereof if the situation so warrants. The Contractor shall have no objection and will fully extend co-operation for such Novation of the Contract to any Tata Group Companies including associates and subsidiaries thereof.

26.0 Changes In Constitution

Where the Contractor is a partnership firm, a prior approval in Writing of the Owner / Project Manager shall be obtained before any change is made in the constitution of the firm and where the Contractor is an incorporated entity, a prior approval in Writing of the Owner / Project Manager should be obtained before any change in Control of the Contractor. Where the Contractor is an individual or a Hindu undivided family business concern, such approval as aforesaid shall likewise be obtained before the Contractor enters into any partnership agreement where-under the partnership firm would have the right to carry out the work hereby undertaken by the Contractor.

27.0 Prohibition on Publicity

The Contractor shall not advertise or promote itself using the name, description of the Owner / Project Manager without the prior written consent if the Owner / Project Manager in the case of each use.

The Contractor shall not issue or make any public announcement or disclose any information regarding this Contract unless prior to such public announcement or disclosure it furnishes to the Owner / Project Manager with a copy of such announcement or information and obtains written approval to its terms. However, no Party shall be prohibited from issuing or making any such public announcement or disclosing such information if it is necessary to do so to comply with any applicable Law or the regulations of a recognized stock exchange.

28.0 Declaration by Contractor

All articles, Clauses, Conditions, Manuals, instructions cross referred in this GCC are fully read, understood by the Contractor in their entirety for fruitful implementation.