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# **ASSAM POWER GENERATION CORPORATION LIMITED**

BIDDING DOCUMENTS

(NATIONAL COMPETITIVE BIDDING)

**FOR**

**ELECTROMECHANICAL WORKS  
CONTRACT PACKAGE FOR  
KARBI LANGPI MIDDLE-IIHYDRO  
POWER PROJECT (24 MW)**

**(ASSAM, INDIA)**

**Bid No: KLM-II-HPP/PKG- 3**  
**ELECTROMECHANICAL WORKS**

**VOLUME-II**

**CONDITIONS OF CONTRACT**

**February 2025**

## **PREAMBLE**

The Conditions of Contract comprise the “General Conditions”, which form part of the “Conditions of Contract for Plant and Design-Build” Second Edition 2017 published by the Fédération Internationale des Ingénieurs-Conseils (FIDIC), the Particular Conditions of Contract which include amendments and additions to such General Conditions. The provisions to be found in the Particular Conditions of Contract take precedence over the equivalent provisions found under the same Sub-Clause number(s) in the General Conditions.

# **PART-I**

**The General Conditions of Contract shall be:**

## **CONDITIONS OF CONTRACT FOR PLANT & DESIGN BUILD GENERAL CONDITIONS**

Second Edition 2017

ISBN 978-2-88432-082-5

Published by:

FEDERATION INTERNATIONALE DES INGENIEURS-CONSEILS (FIDIC)

The Contractor is expected to purchase his own copy of these FIDIC Conditions of Contract for the execution of the Contract. Copies of these Conditions of Contract can be obtained from:

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**PART-II**  
**PARTICULAR CONDITIONS OF CONTRACT**  
**(PCC)**

# 1. PARTICULAR CONDITIONS OF CONTRACT

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

## Part A – Appendix to Tender

Ref. GCC	Subject	Data
1.1.30	<b>Employer's name and address</b>	<b>Assam Power Generation Corporation Limited</b> <b>3rd Floor. Bijulee Bhawan, Paltan Bazar, Guwahati – 781001, Assam, India</b>
1.1.35	<b>Engineer's name and address</b>	Chief General Manager (NRE), APGCL, O/o The Managing Director, APGCL, 3rd Floor, Bijulee Bhawan, Paltan Bazar, Guwahati-781001
1.1.86	<b>Time for Completion</b>	730 days from commencement date for Electromechanical works.
1.1.27	<b>Defects Notification Period</b>	730 days
1.3(a)	<b>Communication</b>	Employer: <b>Assam Power Generation Corporation Limited</b> Attention: Chief General Manager (NRE) Email: Contractor: <i>[Name and Email of the successful bidder]</i>
1.4	<b>Governing Law</b>	The Laws of India
1.4	<b>Ruling language</b>	English
1.4	<b>Language for communications</b>	English
2.1	<b>Right of access to the Site</b>	The Employer shall give the Contractor right of access to and possession of the site in parts immediately upon issuing Notice to Proceed, the details of which may be discussed during the Contract Agreement signing.
4.2	<b>Performance Security</b>	The amount of the Performance Security shall be ten percent (10%) of the Contract Price stated in the Contract Agreement and shall be in the currencies and proportions in which the Contract Price is payable.
6.5	<b>Working hours</b>	Normal working hours shall be 08:00 am to 06:00 pm. However, work shall be carried out at the Site, with prior intimation to the Client, for sufficient hours to ensure that the Contractor meets the agreed Time for



		Completion. Notwithstanding this, the Contractor shall at all times comply with all applicable (labour) regulations.
8.1	<b>Commencement of Work</b>	The Contractor shall begin work upon issuance of Notice to Proceed. The zero date shall be counted from the date of Notice to Proceed after release of advance payment provided bank guarantees for advance payment and performance security shall be furnished by the successful tenderer within thirty (30) days from the date of issue of LOA.
8.8 & 14.15(c)	<b>Delay damages</b>	0.05% per day of Contract Price.
8.8	<b>Maximum amount of delay damages</b>	10% of the Contract Price.
13.4 (b)(ii)	<b>Provisional Sums</b>	No Provisional Sums will be included in the contract.
13.7	<b>Adjustments for Changes in Cost</b>	The price quoted are firm as on date of bid opening as per clause 14.7-payment sub clause-6 and in subclause 13.7 of GCC
14.15	<b>Currencies of payment</b>	INR (Indian Rupees) only
14.2	<b>Total Advance Payment</b>	10% of the Interest Free supply Contract Amount without GST and 10% of the Interest Free work Contract Amount with GST payable in the currencies and proportions in which the Contract Price is payable
14.2	<b>Amount, Number, and timing of instalments</b>	Recovery of advance payment shall be made as 10% of invoice value from each invoice starting from first invoice
14.3 (c)	<b>Percentage of Retention</b>	i) For supply -10% of the total amount of each interimpayment after deduction of advance payment recovery. ii) For works- 30% of the total amount of each interimpayment after deduction of advance payment recovery.
14.3 (c)	<b>Limit of Retention Money</b>	i) 10% of Supply Contract price including applicable GST. ii) 30% of works contract price including applicable GST.

14.4	<b>Schedule of Payments</b>	Replace the clause with "The Contractor shall be paid for the quantities achieved as per the Price BoQ included in volume IV.
14.6	<b>Minimum Amount of Interim Payment Certificates</b>	Minimum 1 % (One percent) of Contract Price
19.1 (a)	<b>Evidence of Insurance</b>	30 days
19.1(b)	<b>Relevant Policies</b>	60 days
19.2(d)	<b>Maximum amount of deductibles for insurance of the Employer's risks</b>	Rs. 25,000.00 per claim. In case of A O G peril Rs.1,00,000.00 per claim.
19.2.5	<b>Minimum amount of third-party Insurance</b>	i) for property Indian, National Rupees Ten (10) million, ii) per person Indian National Rupees One (01) million

## PART B

### **SPECIAL PROVISIONS (PARTICULAR CONDITIONS)**

These Special Provisions (Particular Conditions –Part B) of Contract (PCC) shall be read in conjunction with, and with reference to the Conditions of Contract for Plant Design & Build Projects, Second Edition 2017.

Wherein the General Conditions reference is made to the Special Provisions (Particular Conditions – Part B), the following amplifications are hereby provided in respect thereof. Where also it has been deemed necessary, in view of the particular circumstances of this Contract, to modify certain Clauses of the General Conditions, such modifications are being provided hereunder in these Special Provisions (Particular Conditions –Part B). These Special Provisions shall be read and construed in association with the General Conditions, as though they were incorporated therein.

The following Special Provisions (Particular Conditions of Contract–Part B) shall supplement the GCC. Whenever there is a conflict, the provisions herein shall prevail over those in the GCC.

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# **1** **GENERAL PROVISIONS**

## **1.1** **Definitions**

### **1.1.14 "Contractor's Documents"**

Delete the contents of this Sub-Clause in its entirety and replace with the following:

"Contractor's Documents" means the documents prepared by the Contractor as described in Sub-Clause 5.2 [Contractor's Documents], including calculations, digital files, computer programs and other software, drawings, manuals, models, specifications, and other documents of a technical nature and all documents prepared, including documents created and stored on any readable media and supplied by the Contractor under the Contract or in performing the Works, whether or not approved by the Employer.

### **1.1.21 "Country"**

Delete the contents of Sub-Clause in its entirety and replace with:

"Country" means India.

### **1.1.33 "Employer's Requirements"**

Delete the contents of this Sub-Clause in its entirety and replace with the following:

"Employer's Requirements" means the "Scope of Works", the "General Requirements" and the "Technical Requirements" forming Volume 3 (Employer's Requirements) and the Drawings forming Volume 5 (Tender Drawings) of the Bidding and Contract Documents and any supporting Documents.

### **1.1.42 "Foreign Currency"**

*At the end of the Sub-Clause 1.1.42, add the following:*

"Foreign Currency" means United States Dollars (USD).

### **1.1.49 "Laws"**

*Delete definition in its entirety and replace with:*

"Laws" means.

- (a) all federal, national, state or local laws, legislation, statutes, acts, decrees, rules, ordinances, codes, judgment's, orders, treaties, regulations, directives, requirements, by-laws, codes of practice and other laws, government restrictions or announcements or interpretation thereof and other subordinate legislation, enacted or issued by any legally constituted federal, national, state, local, statutory or government authority as may apply at any time in India (including labour laws, immigration, trade, customs, road and traffic laws), or anywhere else the Works are to be performed;

(b) the requirements, rules, and regulations of any federal, national, state, local, statutory or government authority, including legislation and regulations covering the registration and licensing of the Contractor necessary for the proper execution of the Works in accordance with the Contract; and.

(c) guidelines of all federal, national, state, local, statutory, or public authorities, with which the Contractor is legally required to comply.

**1.1.52 "Local Currency"**

*At the end of the Sub-Clause 1.1.52, add the following:*

"Local Currency" means Indian Rupees INRs. /Rs.

**1.1.65 "Permanent Works"**

*Delete the contents of this Sub-Clause in its entirety and replace with the following:*

"Permanent Works" means the permanent works (including Plant and Equipment when it is installed in its final position on Site) to be designed and executed by the Contractor, as described and shown in and/or reasonable to be inferred under the Contract including those described by a provisional sum.

**1.1.73 "Schedule of Payments"**

*Delete the contents of this Sub-Clause in its entirety and replace with the following:*

"Schedule of Payments" means the Bid Prices/Schedule of payments forming part of the Contract, which, in respect of any section or item of the Works to be carried out, sets out the manner in which the Contract Price has been calculated and will be paid, and which may include Provisional Sums and/or a schedule of rates and prices for the purposes of valuing Variations.

**1.1.77 "Site"**

*In the first line after "places where the" insert:*

"Temporary and"

*Delete "and any other places as may be specified in the Contract as forming part of the Site" and replace with:*

"As shown on the Tenderer Drawings and/or maps set out in the Employer's Requirements."

*At the end of definition insert:*

"Unless so designated, compound, lay down and storage areas not shown on the Employer's Concept Drawings and/or map/maps set out in the Employers Requirements, but which are arranged, agreed and/or paid for directly by the Contractor's shall not form part of the Site."

#### **1.1.83 "Tender"**

Add the following at the end of this definition:

The word "Tender" is synonymous with the word "Bid", the word.

"Tenderer" with "Bidder" the word "Tendering" with

"Bidding" and the words "Tender Documents" with "Bidding

Documents".

#### **1.1.86 "Time for Completion"**

*After "the Works" and before "or a section" add a coma and insert:*

"Milestone/BoQ Item".

#### **1.1.88 "Variation"**

*Delete definition in its entirety and replace with:*

"Variation" means any change or modification to the Employer's Requirements which is instructed and/or approved as a variation by the Employer in writing in accordance with, and specifically identified to be a variation, under Sub-Clause 13. For the avoidance of doubt, a Variation can include any increase, decrease or omission of any part of the Works, change in the character, quality, change in the levels, lines, positions, or dimensions of any part of the Works or the demolition or removal of material or any part of the Works no longer required by the Employer.

#### **After Sub Clause 1.1.90. add the following Sub Clauses:**

##### **1.1.91 "Best Industry Practice"**

"Best Industry Practice" means the relevant practices, methods, standards and acts generally followed by international construction contractors with respect to the planning, design, procurement, installation, commissioning, testing, operating, maintenance and repair of works with characteristics and in a location comparable to those of the Works at the Site and includes the performance of the work:

- (a) in a sound and workmanlike manner, with all due care and skill and applying internationally accepted engineering, procurement, construction and management practices and procedures.
- (b) in a timely manner with due expedition and without unnecessary or unreasonable delay,
- (c) using specified internationally accepted standards (or if no standards are specified, those standards which are approved by the Employer) for the quality and quantity of Materials, Plant, and workmanship applicable to works having characteristics comparable to those of the Works, and
- (d) with all Materials and workmanship suitable for their respective purposes and properly certified where appropriate.

#### **1.1.92 "Document Schedule"**

The Contractor shall provide a detailed schedule of documents including drawings (the "Document Schedule") to be produced during execution of the Works pursuant to the Contract for submission to the Employer. The Document Schedule shall indicate, by generic type, those supplied for review and comment (design reports, procedures, etc) and those for information. The Contractor shall submit this Document Schedule for Employer's Review and Approval within Twenty-Eight (28) days of the Commencement Date and monthly thereafter as part of the monthly progress report, required under Sub-Clause 4.20 [Progress Reports] of the Conditions of Contract.

The Document Schedule shall also indicate to the Employer those specific design, safety and related elements required for third party verification and, where possible, the proposed third party.

#### **1.1.93 "Drawings to be provided by the Contractor"**

"Drawings to be provided by the Contractor" means the fully coordinated drawings, including design, installation, manufacturing and working drawings including editable AutoCAD files, editable soft copy of BIM / Navis ware Models / drawings, developed/produced by the Contractor, in conformity with the Employer's Requirements, and which include all the relevant and necessary information, including but not limited to trades, disciplines, installation details, builder's work details, goods, materials, plant and equipment management. All drawings have to be submitted to the employer excluding the intellectual proprietary items.

#### **1.1.95 "Government"**

"Government" means the Government of India.

#### **1.1.96 "Government Authority"**

"Government Authority" means the Government, any governmental department, state owned entity, ministry, commission, board, bureau, agency, regulatory authority, instrumentality, judicial, legislative or administrative body of India, or any subdivision of any of them.

#### **1.1.97 "Intellectual Property Rights"**

"Intellectual Property Rights" means all current and future registered and unregistered rights in respect of copyright, designs, circuit layouts, trademarks, commercial descriptions, trade names, know-how, confidential information, moral rights, patents, inventions and discoveries and all other intellectual property as defined in article 2 of the convention establishing the World Intellectual Property Organization in 1967.

#### **1.1.98 "Liens"**

"Liens" means any bill of sale, as defined by law, mortgage, charge, lien, pledge, hypothecation, title, retention, arrangement, trust or power, as or having effect as a security for payment of any monetary obligation, or the observance of any other obligation.

#### **1.1.99 "Milestone/BoQ Item"**

"Milestone/BoQ Item" means a portion of the Works specified in the Contract as a



Milestone/BoQ Item.

**1.1.100 "Milestone Date"**

"Milestone Date" means a date which a Milestone has to be achieved.

**1.1.101 "Moral Rights"**

"Moral Rights" means any of the rights described in Article 6bis of the Berne Convention for the Protection of Literary and Artistic Works 1886 (as amended and revised from time to time), being "droit moral" or other analogous rights arising under any law, that exist, or that may come to exist, anywhere in the world.

**1.1.103 "or approved equivalent"**

"or approved equivalent" means an item such as material or equipment which may be substituted for the exact item specified since it is substantially equivalent in function, dimensions, quality and durability, provided that such substitution is:

(a) proposed in writing to the Engineer for approval accompanied by sufficient information such as catalogues, test data, specifications, references, etc., and

(b) following approval by the Engineer, is delivered sufficiently in advance so as not to interrupt the progress of the Works or to extend the scheduled date for delivery of material."

**1.1.104 "Parent Company Guarantee"**

"Parent Company Guarantee" has the meaning given in Sub Clause 4.25 [Parent Company Guarantee].

**1.1.105 "Prohibited Activity"**

"Prohibited Activity" means any of the following:

(a) production or activities involving harmful or exploitive forms of forced labour or child labour,

(b) production of or trade in any product or activity deemed illegal under applicable Laws or international conventions and agreements or which are subject to international phase-outs or bans, such as:

(i) pharmaceuticals, pesticides, and herbicides,

(ii) ozone-depleting substances,

(iii) polychlorinated biphenyls and other hazardous chemicals,

(iv) wildlife or wildlife products regulated under the Convention on International Trade in Endangered Species of Wild Fauna and Flora, and

(v) trans-boundary trade in waste or waste products

(c) production of or trade in weapons and munitions, including paramilitary materials,

(d) production of or trade in alcoholic beverages,

- (e) production of or trade in tobacco,
- (f) gambling, casinos and equivalent enterprises,
- (g) production of or trade in radioactive materials, including nuclear reactors and reactor components,
- (h) use of, production of or trade in unbonded asbestos fibres, and
- (i) commercial logging operations in forests.

**1.1.106 "Plant"**

"Plant" means the apparatus, machinery and other equipment intended to form or forming part of the Permanent Works.

**1.1.107 "Prohibited Materials"**

"Prohibited Materials" means Materials which:

- (a) affect or put at risk the health or safety of any person who may come into contact with the Works (whether during their installation or after their completion), or.
- (b) either by themselves or as a result of their use in a particular situation or in combination with other Materials, would or are likely to have the effect of reducing the normal life expectancy or performance of any other material or structure in which the Materials are incorporated or to which they are affixed.

**1.1.108 "Project"**

"Project" means the design, engineering, procurement, installation, testing and commissioning of the 24MW Karbi Langpi Middle II Hydro Power Project, India.

**1.1.109 "Resident Engineer"**

"Resident Engineer" means an assistant to the Engineer who will be resident on the Site and is appointed from time to time by the Engineer under Sub-Clause 3.4 and notified to the Contractor.

**1.1.110 "Tax"**

"Tax" means all direct and indirect taxes imposed by any governmental entity or semi-governmental entity (including the Government and any Government Authority), including GST, income tax, corporate taxes, withholding taxes, customs duties, fees, levies, imposts, charges, dues or assessment of any nature.

**1.1.112 "Testing Plan"**

"Testing Plan" means the plan to be prepared and submitted by the Contractor under Sub-Clause 7.4 [Testing by the Contractor].

## 1.2 Interpretation

*At the end of the sub-paragraph (i) delete "and" and at the end of sub- paragraph (j) delete the full stop and replace with a coma and insert the following sub-paragraphs:*

- (k) unless otherwise stated in the Employer's Requirements, the "International System of Units" (the metric system) shall apply to this Contract in every respect;
- (l) references to any Clause, Sub-Clause, Appendix or Annex are references to the clauses, sub-clauses, appendices or annexes of these Conditions of Contract,
- (m) where a word, term, phrase or abbreviation is defined, another part of speech or grammatical form in respect of that word or expression will have a corresponding meaning,
- (n) a reference to anything (including an amount) is a reference to the whole and each part of it,
- (o) whenever the date for the performance of any payment obligation falls on a date that is not a working day (being a day on which banks are not generally open for business in India), such date shall be extended to the next succeeding working day,
- (p) Bid/tender, Bidder/tenderer, Bidding/tendering, and other similar expressions are synonymous for purposes of these Bidding and Contract Documents, and
- (q) The Employer's Requirements are written as an output specification and defines what the Contractor shall achieve in providing the Works under the Contract. Except as expressly stated otherwise, the Contractor shall carry out the Works as required and contemplated by each provision of the Employer's Requirements whether or not the provision is written as an obligation of the Contractor or is stated in the imperative form.

## 1.3 No Change

## 1.4 No Change

## 1.5 Priority of Documents

*Delete items (a) through (i) and replace with the following:*

- 1) Contract Agreement and appendixes.
- 2) Letter of Acceptance/Award;
- 3) Minutes of Negotiation Meetings and addenda (if any);
- 4) Contract Data (Particular Conditions Part A);
- 5) Employer's Requirements; / Technical Specifications under Vol III
- 6) Special Provision (Particular Conditions Part B);
- 7) General Conditions of Contract;
- 8) Price Schedule (Schedule of Payments);
- 9) Completed schedules;
- 10) Tender
- 11) Bid submitted by the Bidder
- 12) JV Undertaking (if the Contractor is a JV); and
- 13) Any other documents forming part of the Contract.

*Insert the following paragraphs at the end of this Sub-Clause:*

In case of discrepancy, the document at top shall have higher priority.

Notwithstanding the priority of documents as stated above, the following shall govern the Employer's clarification in respect of any discrepancies or ambiguities between the documents:

(a) Any item of work mentioned in the Employer's Requirements, shall be deemed to form part of the Works and shall be executed by the Contractor as if shown or mentioned in both.

(b) Generally, the Employer's Requirements describe the work which cannot be readily indicated on the Employers Concept Drawings and indicate types, qualities and methods of installation of the various materials and equipment required for the Works. It is not intended to mention every item of work in the Employer's Requirements which can be adequately shown on the Employer's Concept Drawings, or to show on the Employer's Concept Drawings all items of work described or required by the Employer's Requirements even if they are of such nature that they could have been shown thereon. All materials or labour for work which are shown on the Employer's Concept Drawings or are reasonably inferable there from as being necessary to complete the Works shall be provided by the Contractor whether or not the work is expressly covered in the Employer's Requirements.

(c) Any difference between the requirements of the Employers Concept Drawings and the Employers Requirements or any differences noted within the Employers Concept Drawings themselves, shall be referred to the Employer, who shall thereupon issue to the Contractor instructions in what manner the works have to be carried out. If, in the opinion of the Employer the more stringent of the requirements shall govern, the Contractor shall be obliged to comply with such requirements with due expedition and without delay, and at no extra cost to the Employer.

## **1.6 Contract Agreement**

*Delete the second paragraph of Sub-Clause 1.6 in its entirety and replace with the following:*

The Contract shall become legally effective and come in to full force when the Parties sign the Contract Agreement.

The Base Date, the Accepted Contract Amount and, if known at the time of signing the Contract Agreement, the Commencement Date and the Completion Date shall be entered into the Contract Agreement.

*Add the following after the end of Sub-Clause 1.6.*

No compensation, whatsoever, will be applicable, or paid, before the legally effective date

## **1.7 Assignment**

*Delete the contents of this Sub-Clause in its entirety and replace with the following:*

(a) The Contractor agrees that the Employer, at its absolute discretion and at a date to be determined by the Employer, may assign, novate, transfer, dispose and/or charge the benefit of the whole or any part of the Contract, of any or all of its rights, interests, obligations or liabilities under the Contract.

(b) In the event of any sale, assignment, novation, transfer or disposal by the Employer, the Contractor must do all things and execute all documents necessary (including a deed of novation if applicable) to effect the sale, assignment, novation, transfer or disposal.

(c) The Contractor shall not be entitled to assign or novate the Contract, in whole or in part, nor any benefit, interest, right or obligation under the Contract, nor payment due under the Contract, without the prior consent of the Employer, which may be given or withheld at the Employer's absolute discretion.

(d) The Employer may, as security in favour of a bank or financial institution or other lender, assign the Contract or its right to any moneys due, or to become due, under the Contract.

### **1.8 Care and Supply of Documents**

*Between the second and third paragraph insert the following:*

In the preparation of the calculations and drawings, the Contractor shall anticipate and be responsible for updating the Contractor's Documents to incorporate:

(i) changes to suit modifications arising from the encountered conditions revealed during installation, including instructions issued by the Engineer;

(ii) drawing revisions issued by the Engineer;

(iii) drawings issued by other contractors required for the installation of the Works arising from the specified liaison with other contractors.

*In the third paragraph between the words "The Employer's" and "personnel shall" insert:*

and the Engineer's

### **1.9 No Change**

### **1.10 Employer's Use of Contractor's Documents**

*At the end of Sub-Clause 1.10, add the following:*

The rights afforded the Employer by this Sub-Clause 1.10 shall be transferable to any future owners of all or part of the Project and for the benefit of any Party that takes an assignment pursuant to Sub-Clause 1.7 (d) above.

### **1.11 No Change**

### **1.12 Confidentiality**

*Insert the following paragraph at the end of this Sub-Clause:*

The Contractor, and all members in the case of a Joint Venture, shall not publish, permit to be published, or disclose any particulars of the Works in any trade or technical paper or elsewhere without the previous agreement of the Employer. However, the Contractor, and all members in the case of a Joint Venture, will be permitted to disclose any publicly available information, or information otherwise required to establish his qualifications to compete for other projects with the Employer's prior consent.

### **1.13 Compliance with Laws**

*Insert the new sub-paragraphs (e) to (g) as follows:*

(e) The Contractor shall complete the Works in accordance with the permits, licenses and approvals referred to, and to the satisfaction of the relevant authorities. The Contractor shall be responsible for arranging inspections by all relevant authorities and for obtaining a "Certificate of Completion" (or its equivalent) from such authorities and other approvals as necessary to ensure completion of the Works in accordance with this Contract.

(f) Neither the Contractor, nor any of the Contractor's Personnel, shall engage in any of the following activities and practices, either directly or indirectly, in connection with the Works or the Project:

i) offer, give, receive or solicit, directly or indirectly, anything of value with a view to improperly influencing the actions of another person or party (including the Employer), including acts intended to violate or derogate a duty owned by a recipient in order for the payer to obtain an undue advantage or avoid an obligation,

ii) acts or omissions that knowingly or recklessly mislead, or are attempts to mislead, a person or party (including the Employer) to obtain a financial or other benefit or to avoid an obligation, including any misrepresentation,

iii) impair or harm, or any threat to impair or harm, directly or indirectly, a person or party, or the property of a person or party (including the Employer), with a view of improperly influencing the actions of that person or party,

iv) conclude an arrangement with any other person or party (including the Employer) which achieves, or is designed to achieve, an improper purpose, including improperly influencing the actions of another person or party (through the provision of a gift, inducement, bribe, reward or otherwise),

v) activities which constitute money laundering or financing of terrorism under applicable Laws, and

vi) any Prohibited Activity.

(g) The Contractor shall indemnify and hold harmless the Employer, the Employer's Personnel and their respective agents against and from all claims, damages, losses and expenses (including legal fees and expenses) arising out of or in connection with any failure to comply with this Sub-Clause 1.13 [Compliance with Laws].

### **1.14 Joint and Several Liability**

*Insert the following new paragraphs at the end:*

In the event the Contractor does constitute a Joint Venture (joint venture, association, consortium or other unincorporated grouping of two or more members or persons), the Contractor shall deliver to the Employer, prior to the signing of the Contract Agreement, the final and binding and duly notarised Joint Venture Agreement conforming to the Joint Venture Agreement submitted in the bid documents. The Joint Venture Agreement shall include at least the following:

- (a) the percentage and areas of sharing of the Works between the Joint Venture members;
- (b) level of responsibility within the Joint Venture and nomination of the lead member; and
- (c) other information requested by the Employer.

The final notarized Joint Venture Agreement shall be maintained in its current form throughout the execution of the Contract and the Contractor shall not modify the said Agreement in any way whatsoever without the prior agreement of and at the sole discretion of the Employer. The Contractor shall submit copies of all notarized changes to the said Agreement, as agreed to by the Employer, to the Employer within 14 days of their occurrence.”

### **1.15 Limitation of Liability**

*Add the following sub-paragraphs after sub-paragraph (g) of the first paragraph:*

- (h) the Contractor's liability in connection with Performance Damages in accordance with Sub-Clause 9.4 [Failure to Pass Tests on Completion],
- (i) in respect of liabilities to the extent that are (or, but for a vitiating act or omission of the Contractor, should be) covered by proceeds received under insurance policies required to be taken out and maintained under the Clause 19 [Insurance] (including where the Contractor is subsequently reimbursed by the Employer from the proceeds of such insurance policies),
- (j) to the extent such losses or costs relating to would otherwise be expressly recoverable following any termination of the Contract pursuant to Sub-Clause 15.2 [Termination for Contractor's default], or
- (k) in respect of a breach of Sub-Clause 6.7 [Health and Safety].
- (l) in respect of any liability arising under indemnities given by the Contractor under the Contract, including under Sub clause 17.1 [*Responsibility for Care of the Works*],
- (m) the Contractor's liability in connection with Performance Damages in accordance with Sub-Clause 9.5 [Performance Guarantee],

*Add the following sub-paragraphs after sub-paragraph (iv) of the second paragraph:*

- (v) under:
  - (A) Sub-Clause 1.13 [Compliance with Laws],

- (B) Sub-Clause 11 [Defects after Taking Over], and
- (C) Sub-Clause 1,15 (a)
- (vi) as a result of an abandonment of the Works by the Contractor, and
- (vii) in respect of liabilities to the extent that are (or, but for a vitiating act or omission of the Contractor, should be) covered by proceeds received under insurance policies required to be taken out and maintained under the Clause 19 [Insurance] (including where the Contractor is subsequently reimbursed by the Employer from the proceeds of such insurance policies).

*In the last paragraph of this Sub-Clause, after the word “misconduct” insert the following:*

“or any of the activities listed in Sub-Clause 1.13 [Compliance with Laws],”

#### **1.16 No Change**

#### **Insert new Sub-Clauses 1.17 to 1.23 as follows:**

#### **1.17 Severability**

If the enforcement or operation of any provision of the Contract is prohibited by Law or if any provision of the Contract is by Law rendered void, invalid or unenforceable, such prohibition, voidness, invalidity or unenforceability shall not affect the validity or enforceability of any other provisions and conditions of the Contract.

#### **1.18 Privity**

No provision of the Contract is intended to or does confer upon any third party (including any Subcontractor) any implied benefit or right enforceable at the option of the third party against the Employer.

#### **1.19 Each Party to Act at its own cost.**

Any reference in the Contract to a Party being obliged to do something at its cost, will not limit its obligation to do everything else it is required to do under the Contract at its cost. For the avoidance of doubt, each Party shall discharge all its obligations under the Contract at its own cost unless the Contract otherwise expressly provides.

#### **1.20 Entire Agreement**

The Contract constitutes the entire agreement between the Employer and the Contractor with respect to the subject matter of the Contract and supersedes all communications, negotiations and agreements (whether written or oral) of the Parties with respect thereto made prior to the date of the Contract Agreement.

#### **1.21 Amendments to Contract**

Subject to any Variation instructed by the Employer in accordance with Clause 13 [Variations and Adjustments], no amendment of the Contract shall be valid unless it is in writing, is dated, expressly refers to the Contract and is signed by duly authorized representatives of the Parties.

#### **1.22 Contractor’s Liability Unaffected**



The Contractor's liability under the Contract shall not be reduced, relieved or in any way affected by:

- (a) any comment, review, audit, rejection, approval, acquiescence or acceptance of any matter or thing nor any failure to comment, review, audit, reject, approve or accept the same;
- (b) any inspection, test, supervision or failure to inspect, test or supervise;
- (c) the making of any payment; or
- (d) the provision of any information, whether contained in the Contract or otherwise and whether supplied before or after the Base Date

in any such case by the Employer, the Employer's Representative or the Employer's Personnel.

### **1.23 Inspections by the Financier**

Upon instruction from the Engineer, the Contractor shall permit the Financier and/or persons appointed by the Financier to inspect the Site and provide them with the audited Contractor's general ledger accounts and records relating to the performance of the Contract.

## **2 THE EMPLOYER**

### **2.1 Right of Access to the Site**

*Delete the first paragraph and replace with:*

Subject to Sub-Clause 4.15 [Access Route], and where applicable Sub-Clause 4.28 [Land Owners and Access Route Owners], the Employer shall give the Contractor right of access to and possession of sufficient parts of the site to enable the Contractor to commence the Works within 56 days from Commencement Date, unless otherwise stated in the Employer's Requirements. The right and possession may not be exclusive to the Contractor.

*Delete the second paragraph and replace with the following paragraphs:*

However, the Employer may withhold any such right or possession until the evidence (to the satisfaction of the Employer) of those insurance policies the Contractor is required to obtain in accordance with Clause 19 [Insurances], the health & safety management plan, the environment management plan and the quality management plan to be prepared by the Contractor in accordance with this Contract and any other plans, documents or other materials to be prepared by the Contractor which are stated in the Employer's Requirements as being required to be provided to be given access to, and possession of the Site, have been received.

The right of way, easements, and land for the Permanent Works, Employer's camps, access Roads and temporary Areas are indicated on the Employer's Concept Drawings. The Contractor shall be responsible for making its own arrangements, at his own cost, for the use of land should the areas provided by the Employer be insufficient for the Contractor's needs.

## **2.2 Assistance**

*In the first paragraph between the words "requested" and "by the Contractor" insert:*

in written

*Insert the following paragraphs at the end of this Sub-Clause:*

The Contractor shall inform the Employer and the Engineer in writing of the details of the Contractors' Equipment, Plants, and Materials to be imported into India for use on the Works at least 56 days prior to arrival of shipment at disembarkation port.

The Contractor shall be responsible for transport from the Port of disembarkation to the Site or location of the Works.

Notwithstanding any reasonable assistance provided by the Employer, the Contractor shall be solely responsible for obtaining such laws, permits, licenses, approvals or clearances and the payment of all charges, fees and duties required, and the Contractor shall indemnify and hold the Employer harmless against and from the consequences of any failure to do so.

## **2.3 No Change**

## **2.4 No Change**

## **2.5 Site Data and Items of Reference**

*At the end of this Sub-Clause add the following:*

The Employer accepts no responsibility for, and makes no representation or warranty, express or implied, with respect to the truth, accuracy, completeness, or reasonableness of, any data, information or documentation provided to the Contractor at any time, nor any conclusions or interpretations made in such data, information, or documentation. All data, information or documentation will be supplied by the Employer unless otherwise specified in the tender document. However, the Contractor shall validate the data to confirm the accuracy and completeness of all such data, information, or documentation.

The Contractor shall be deemed to have also satisfied himself before tendering with:

- (a) existing conditions and nature of existing roads and bridges and other means of access to the Site.
- (b) presence of artificial obstructions on ground or underground or above ground, boulders, released water or the like.
- (c) people's rights and interests which may be interfered with or affected by the construction and completion of the Works and remedying of any defects therein.
- (d) hydrological and climatic conditions and the effects there from; and
- (e) nature of the surface and subsurface on or in which the Permanent Works or Temporary Works are to be executed or in the immediate vicinity of the Works and the nature and extent of surface water or water contained in the subsoil to which the Works may be affected by rainfall.

The Contractor shall be fully responsible for any of his failure, error or omission in obtaining any relevant information which may in any way influence or affect the execution of works.

## **2.6 No Change**

### **Insert new Sub-Clauses 2.7 and 2.8 as follows:**

## **2.7 Employer May Act**

The Employer may either himself, or by a third party, perform a Contract obligation which the Contractor was obliged to perform but which he has failed, or is failing, to perform. The costs, expenses and damages suffered or incurred by the Employer in doing so will be a debt due and payable by the Contractor to the Employer.

## **2.8 Waiver**

None of the terms, provisions or conditions of the Contract shall be considered waived by the Employer, unless a waiver is given in writing by the Employer.

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

The condoning of any breach or breaches by the Contractor or by any Sub-contractor of any of the stipulations and conditions contained in the Contract shall in no way prejudice or affect or be construed as a waiver of the Employer's rights, power, and remedies under the Contract in respect of any other breach or breaches as aforesaid.

## **3 THE ENGINEER**

Engineer will be Employer Representative

### **3.1 No Change**

### **3.2 Engineer's Duties and Authority**

*In the third paragraph delete the sentence "There shall be no requirement for the Engineer to obtain the Employer's consent before the Engineer exercises his/her authority under Sub-Clause 3.7 [Agreement or Determination]. The Employer shall not impose further constraints on the Engineer's authority." and replace with:*

The Employer will promptly inform the Contractor of any change to the authority attributed to the Engineer.

*At the end of this Sub-Clause add the following:*

Any act by the Engineer in response to a Contractor's request except as otherwise expressly specified shall be notified in writing to the Contractor within 28 days of receipt.

*Insert the following paragraph at the end of this Sub Clause:*

The Engineer shall obtain specific approval of the Employer before taking any of the following actions:

- i. consenting to any change of a Sub-Contractor under Sub-Clause 4.4 [Subcontractors];*
- ii. certifying additional cost determined under Sub-Clause 4.12 [Unforeseeable Physical Conditions];*
- iii. determining an extension of time under Sub-Clause 8.5 [Extension of Time for Completion];*
- iv. instructing the Contractor to suspend the progress of the Works under Sub-Clause 8.9 [Employer's Suspension], which would be liable to give rise to a determination under Sub-Clause 8.10 [Consequences of Employer's Suspension];*
- v. issuing a Taking-Over Certificate under Sub-Clause 10.1 [Taking Over the Works and Sections];*
- vi. issuing a variation under Clause 13.1 [Right to Vary];*
- vii. Fixing rates or prices under Clause 13.3 [Variation Procedure]; and*
- viii. Determining an additional payment for Claims under Sub Clause 20.2 [Claims for Payment and/or EOT].*

Notwithstanding the obligation, as set out above, to obtain approval, if, in the opinion of the Engineer, an emergency occurs affecting the safety of life or of the Works or of adjoining property, the Engineer may, without relieving the Contractor of any of the Contractor's duties and responsibilities under the Contract, instruct the Contractor to execute all such work or to do all such things as may in the opinion of the Engineer, be necessary to abate or reduce the risk, with a copy to the Employer. The Contractor shall forthwith comply, despite the absence of approval of the Employer, with any such instruction of the Engineer.

The Engineer shall determine any addition to the Contract Price, in respect of such instruction, in accordance with Sub-Clause 3.7 [Agreement or Determination] and shall notify the Contractor accordingly, with a copy to the Employer together with the justification of emergency occurrence.

**3.3 No Change**

**3.4 No Change**

**3.5 No Change**

**3.6 No Change**

**3.7 No Change**

**3.8 No Change**

**Insert new Sub-Clauses 3.9 and 3.10 as follows:**

**3.9 Non-Compliance with Instructions**

If the Contractor fails to comply with an instruction from the Employer, then the Employer shall have the right, which right will be at the sole discretion of the Employer, to withhold payment to the Contractor until such time as the Contractor shall have complied with the

relevant instruction, or to employ others to carry out the works:

- (a) in the case of safety, such rights as described, shall be immediate; or
- (b) in the case where such instruction does not relate to safety, within 7 days and to employ others after 21 days, from the date of the instruction.

and the Contractor shall subject to Sub Clause 20.2 [Claims for Payment and/or EOT] pay to the Employer all costs arising there from.

### **3.10 Attendance of Meetings**

Regular progress meetings will be held on a weekly and monthly basis, and the Employer's Representative shall prepare the minutes of the meetings. It is the duty of the Contractor or his Representative to participate in such meetings.

## **4 THE CONTRACTOR**

### **4.1 Contractor's General Obligations**

*Between the first and second paragraphs insert the following:*

The Contractor shall design, execute and complete the Works and shall remedy any defects in the Works in accordance with the Contract, including:

- (a) Best Industry Practice
- (b) all applicable Laws and the terms of any licences, permits and consents,
- (c) the Employer's Requirements, and
- (d) the Programme.

*Between the fourth and fifth paragraph insert:*

The Contractor shall conduct his operations in such a manner as to avoid injury or damage to adjacent property or facilities.

It shall be the responsibility of the Contractor, before commencing any works, to ascertain from records or otherwise, the existence, position and ownership of adjacent property or facilities. The cost of which is deemed to included, and no additional reimbursement will be made in this regard.

The Contractor shall note that his responsibility shall apply to the whole of the land or facilities occupied or used by him for the purpose of the Works.

*At the end of this Sub-Clause add the following:*

The Contractor's obligations shall extend to any interfaces between his works and those of Other Contractors.

## **4.2 Performance Security**

### **1) Contractor's obligations**

*Delete the first paragraph of this Sub-clause 4.2.1 in its entirety and replace with:*

The Contractor shall obtain (at his cost) and submit Performance security for his proper performance of the Contract, within 28 days after the receipt of the Letter of Acceptance. The Performance Security shall be in the form of an on-demand and unconditional guarantee, issued by a Class "A" commercial bank located in India, or if issued by a foreign bank, it shall be counter guaranteed by a Class "A" commercial bank in India, and shall be subject to approval of the Employer (but such approval shall not relieve the Contractor from any obligation under this Sub-Clause).

*Delete the third paragraph and sub-paragraph of this Sub-Clause in its entirety and replace with the following:*

"Without limitation to the provisions of the preceding paragraph, whenever the Employer determines an addition to the Contract Price as a result of a change in cost and/or legislation or as a result of a variation amounting to more than ten percent (10%) of the portion of the Contract Price payable in a specific currency, the Contractor, at the Employer's written request, shall promptly increase the value of the Performance Security in that currency by an equal percentage."

"Notwithstanding the foregoing, Contractor shall not be entitled to an extension of time if the relevant delay has already been taken into account in the determination of a previous extension of time."

### **2) Claims under the Performance Security**

*In the sub paragraph (a) of this Sub-Clause, delete the phrase "(or, in the case of previous reduction(s), the full remaining amount)".*

*Add the following paragraph at the end of this Sub-Clause 4.2.2*

In the event that the Contractor does not extend the validity as required, the Employer has the right to call in the full amount or the full amount outstanding at the time (as the case may be) of the Performance Security and hold it as cash security until such time as the Contractor supplies a replacement Performance Security acceptable to the Employer. The Employer will then return the cash retained as security to the Contractor once a replacement Performance Security has been provided by the Contractor which complies with the requirements of this Sub-Clause, less such amounts as required to cover the reasonable costs incurred by the Employer as a result of the failure by the Contractor to extend the validity of the Performance Security as required.

The Contractor waives any right that it may have to obtain an injunction or any other remedy or right against any party in respect of the Employer having recourse to the Performance Security.

### **4.3 Contractor's Representative**

*After the first paragraph insert the following paragraph:*

The Contractor's Representative shall be a professionally qualified engineer with at least 20 years' experience in electro-mechanical engineering and construction and shall have at least 10 years' experience in managing projects similar to the works under the Contract. If the Contractor constitutes a joint venture or of two or more, the lead partner shall provide the Contractor's Representative.

*At the end of the fifth paragraph add the following:*

Any instruction given by the Engineer, not otherwise required to be in writing, shall, at request of the Contractor, be given or confirmed in writing.

### **4.4 Subcontractors**

*Delete the Sub-clause in its entirety and replace with:*

- (a) The Contractor shall not subcontract:
  - (i) the whole of the Works, and
  - (ii) any part of the Works without the prior approval of the Employer (which may be withheld in his absolute discretion or be given subject to any conditions which he determines necessary in the circumstances).
- (b) Where reasonable and practicable, the Contractor shall give fair and reasonable opportunity for contractors from India, to be appointed as Subcontractors and suppliers.
- (c) The Contractor shall ensure that the requirements imposed on the Contractor by Sub-Clause 1.12 [*Confidentiality*] and Sub-Clause 6 [Staff and Labour] apply equally to each Subcontractor and supplier.
- (d) The Contractor shall be responsible for the work of Subcontractor or supplier, for managing and coordinating all the Subcontractors' works, and for the acts or defaults of any Subcontractor or supplier, any Subcontractor's agents or employees, as if they were the acts or defaults of the Contractor and any approval given by the Employer of the appointment of a particular Subcontractor or supplier shall not relieve the Contractor of, or alter any of its liabilities or obligations under the Contract.
- (e) At least 28 days prior to proposed date of appointment of any Subcontractor or supplier, the Contractor shall submit, in writing to the Employer, the name, qualifications, organization and information in relation to the financial standing together with the extent and character of the work to be subcontracted, an un-priced copy of the proposed subcontract and the intended commencement date of the Subcontractor's work, in order to obtain written approval of the Employer.
- (f) The Contractor shall pay all sums due to its Subcontractors and suppliers by the due date for payment. The Contractor shall provide evidence satisfactory to the Employer of payment within 7 days if so requested by the Employer.

(g) The Contractor shall indemnify the Employer against any costs, suffered or incurred by the Employer arising out of a failure by the Contractor to make payment in accordance with any subcontract or supply order;

(h) If a payment is made by the Employer to or in respect of a Subcontractor or supplier in compliance with a Law or arbitral or court order, the Employer may recover any such amount paid from the Contractor.

Notwithstanding the Contractor's responsibility for the acts or defaults of any Subcontractor or supplier as aforesaid, if any Subcontractor or supplier engaged on the Works, executes any work or provides any material or things which, in the opinion of the Employer is not in accordance with the Contract, the Employer may, by written notice to the Contractor, require him to terminate such sub-contract or supply order and the Contractor upon the receipt of such notice shall immediately terminate such sub-contract or supply order.

If a Subcontractor's or supplier's obligations extend beyond the expiry date of the relevant Defects Notification Period and the Employer, prior to this date, instructs the Contractor to assign the benefit of such obligations to the Employer, then the Contractor shall do so. Unless otherwise stated in the assignment the Contractor shall have no liability to the Employer for the work carried out by the Subcontractor supplier after the assignment takes effect.

#### **4.5 Nominated Subcontractors**

*At the end of this Sub-Clause add the following:*

The Contractor shall ensure that the requirements imposed on the Contractor by Sub-Clause 1.12 [Confidentiality] and Sub-Clause 6 [Staff and Labour] apply equally to each nominated Subcontractor.

#### **4.6 Co-operation**

*Add the following paragraphs at the end of this Sub-Clause:*

The Project involves other contracts, including in particular Lot 1 (Civil) and Lot 2 (Hydro-mechanical Works) and Lot 3 (Transmission Line and Substations Works) for the execution of the various other Works on the Project which will be performed concurrently with the Works under this Contract. The Contractor shall co-ordinate his general day to day activities with the Employer's other contractors to avoid hindrance and obstruction of the Employer's other contractors as far as is appropriate and reasonable. This will include co-ordination and co-operation with the Employer's other contractors at any interfaces between the work of this Contract and the work of the Employer's other contractors and for joint use of facilities such as roads, site installation areas and other general site services.

Such general co-operation shall be foreseen and provided for in the Contractor's programming and is deemed to be included in the Accepted Contract Amount.

Particular requirements for coordinated working with other contractors are included in Volume 3 General Technical Specification, Section 12 Interfaces Details. This shall



include interfaces within structures for which the Lot 1 Contractor is responsible as well as at other structures and locations.

For these combined activities, the Contractor will make prior planning, in co-operation with the Engineer and the Employer's other contractors, to prepare for and execute these combined activities and to make every reasonable effort to facilitate these activities within the performance of the Works.

No claim for delay arising from interfaces between the Contract and other contracts shall be admissible unless the Contractor can demonstrate that the Contractor has attempted to provide all reasonable liaison and co-ordination in accordance with the requirements of the Contract but that nevertheless unavoidable or unreasonable delays with respect to the progress of the Works have been incurred by the Contractor as a direct result of the actions or omissions of the other contractors.

The Employer may claim against the Contractor for the amount to be compensated to the other contractors if any claim is resulted from other contractors due to non-coordinated works by the Contractor.

#### **4.7 Setting Out**

*At the end of this Sub-Clause 4.7.1, add the following:*

The Employer shall be responsible for any errors in these specified or notified items of reference nevertheless the Contractor shall be responsible for the verifying the original points, lines, levels of reference and other such information provided prior to undertaking the design and execution of the Works. The Contractor shall not be entitled to additional costs or an extension of time due to failure to verify and if necessary, modify the original points, lines and levels of reference, in accordance with this Sub-Clause.

#### **4.8 Health and Safety Obligations**

*Delete Sub-paragraph (b) in its entirety and replace with:*

(b) comply with all applicable health and safety obligations specified in the Contract, the requirements as stated in the Employer's Requirements or any other document forming part of the Contract documents, as may be amended from time to time;

*At the end of sub-paragraph (f) delete "and", and at the end of sub-paragraph (g) delete "." and replace with ", and" and add the following sub-paragraph (h):*

(h) provide the Employer with reasonable access to the Contractors records and facilities, both on and off the Site, to enable the Employer to assess the Contractor's compliance with this Sub-Clause.

#### **4.9 Quality Management and Compliance Verification Systems**

##### **1) Quality Management System**

*Replace the second sentence of the first paragraph of this Sub-Clause 4.9.1 with the following:*

Within Twenty Eight (28) days of the Commencement Date, and in any event prior to any work proceeding, the Contractor shall submit for Employer's Review and Approval a Preliminary QM System as per the Employer's Requirements. Within Fourteen (14) days of the Employer's approval of the Preliminary QM System, the Contractor shall provide the Employer with a detailed QM System for the Employer's Review and Approval taking into account any directions or requirements from the Employer on the Preliminary QM System.

#### **4.10 Use of Site Data**

*At the end of this Sub-Clause add the following:*

The Employer accepts no responsibility for, and makes no representation or warranty, express or implied, with respect to the truth, accuracy, completeness, or reasonableness of, any data, information or documentation provided to the Contractor at any time, nor any conclusions or interpretations made in such data, information or documentation. All data, information or documentation will be supplied by the Employer unless otherwise specified. However, the Contractor shall validate to confirm the accuracy and completeness of all such data, information, or documentation.

The Contractor shall be deemed to have also satisfied himself before tendering with:

- (a) existing conditions and nature of existing roads and bridges and other means of access to the Site.
- (b) presence of artificial obstructions on ground or underground or above ground, boulders, released water or the like.
- (c) people's rights and interests which may be interfered with or affected by the construction and completion of the Works, and remedying of any defects therein.
- (d) hydrological and climatic conditions and the effects there from.
- (e) stability of existing slopes in the Site; and
- (f) nature of the surface and subsurface on or in which the Permanent Works or Temporary Works are to be executed or in the immediate vicinity of the Works and the nature and extent of surface water or water contained in the subsoil to which the Works may be affected by rainfall.

The Contractor shall be fully responsible for any of his failure, error or omission in obtaining any relevant information which may in any way influence or affect the execution of Works.

#### **4.11 Sufficiency of the Contract Price**

*In the second paragraph after the word "Contract" and before the word "and" insert the following:*

(including those under Provisional Sums, if any)

#### **4.12 Unforeseeable Physical Conditions**

*At the end of this Sub-Clause add the following:*

*Without limitation to any other responsibilities of the Contractor under this Contract, it shall be the responsibility of the Contractor to overcome the difficulties, and to complete*

*the Works in any circumstances that arises because of the following risks:*

- (i) that the Contractor's own interpretation of the information given in the Contract proves to be incorrect or inaccurate; and
- (j) that the methods and Plant employed by the Contractor prove to be incorrect, insufficient for the conditions.

#### **4.13 Rights of Way and Facilities**

*At the end of this Sub-Clause add the following:*

The Contractor shall make available and coordinate the use of such special and/or temporary rights-of-way, including access to Site to Other Contractors, employed by the Employer. Such use by Other Contractors shall be free of charge.

#### **4.14 No Change**

#### **4.15 No Access Route**

*At the end of this Sub-Clause add the following:*

The Contractor's attention is directed towards the permissible load-bearing capacities of the existing road and bridges along the public road network. The Contractor shall be responsible for satisfying himself that any of his vehicles or equipment which he intends to pass over any of these and other existing roads and bridges in the area will not damage or endanger the integrity or safety of the bridges and roadways, any associated structures, other traffic and vehicles or the general public.

In the event that the Contractor proposes to carry out any strengthening or supporting works in order to permit the use, for the purposes of executing the Works under the Contract, of any bridge or associated structure or roadway by heavier or larger vehicles or equipment, the Contractor shall submit to the Engineer a copy of all such requests for approval or permission within 3 days of submission of the original request to the party concerned, including all supporting drawings, calculations and other information.

#### **4.16 Transport of Goods**

*At the end of this Sub-Clause add the following:*

Prior notification shall be given by the Contractor to the Employer of any intention to apply for permission to transport a Special Load. 'Special Load' shall mean such load as is outside the normal limits imposed by the Department of Roads in India, in respect of dimension and/or weight.

The Contractor shall be responsible to ensure prompt delivery of equipment and materials to site.

The Contractor shall adequately record the condition of roads, agricultural land and other infrastructure prior to the start of transporting materials, goods and equipment, and construction.”

#### **4.17 No Change**

#### **4.18 Protection of the Environment**

*At the end of this Sub-Clause add the following:*

If the Contractor fails to comply with any of its environmental obligations under the Contract or otherwise at Law, the Employer may take whatever action is necessary to remedy such failure and deduct the cost of such action from moneys due or becoming due to the Contractor.

Furthermore, notwithstanding any other right or remedy the Employer may have under or in connection with the Contract or otherwise at Law, the Contractor shall indemnify and hold the Employer harmless against and from all damages, losses and expenses (including fines, remediation costs, legal fees and expenses) resulting from any non-compliance with the Contractor's obligations under this Sub-Clause.

#### **4.19 Temporary Utilities**

*Delete the Sub-Clause in its entirety and replace with:*

The Contractor shall be responsible for the provision of all temporary utilities, including power, electricity, gas, telecommunications, water and other services, the Contractor or any of his Subcontractors may require, for the performance of the Works.

The Contractor shall, at his own risk and cost, provide any apparatus necessary for his use of these services and for measuring the quantities consumed, and shall make arrangements with the relevant authorities, organizations or companies for such supply and payment.

The Contractor shall not be entitled to any extension to any Time for Completion or any additional costs or other compensation whatsoever from the Employer in connection with the unavailability of sufficient supplies of temporary utilities, including power, electricity, gas, telecommunications, water and other services as may be required for the Works.

Details and prices for electricity, water, gas and other services, if not specified in the Specifications, shall be as fixed from time to time by the respective authorities responsible for supply of such services. Payments of the corresponding costs shall be made directly to the concerned authorities by the Contractor

#### **4.20 Progress Reports**

*Delete the Sub-Clause in its entirety and replace with:*

The Weekly and monthly progress reports shall be prepared by the Contractor in a form approved by the Employer, and submitted to the Employer in six (6) hard copies and two (2) soft. The first report shall cover the period up to the end of the first calendar month following the Commencement Date. Reports shall be submitted monthly thereafter, each within 7 days after the last day of the period to which it relates.

Reporting shall continue until the Contractor has completed all work which is known to be outstanding at the completion date stated in the Taking-Over Certificate for the Works.

Each Monthly report shall include:

- (a) Charts and detailed descriptions of progress, including each stage of design, Contractor's Documents, procurement, manufacture, delivery to Site, installation, erection, testing, commissioning and trial operation.
- (b) photographs showing the status of manufacture and of progress on the Site.
- (c) for the manufacture of each main item of Plant and Materials, the name of the manufacturer, manufacture location, percentage progress, and the actual or expected dates of:
  - (i) commencement of manufacture,
  - (ii) Contractor's inspections,
  - (iii) tests, and
  - (iv) shipment and arrival at the Site.
- (d) the details described in Sub-Clause 6.10 [*Records of Contractor's Personnel and Equipment*].
- (e) copies of quality assurance documents, test results and certificates of Materials.
- (f) a list of Variations, and any Notices given (by either Party) under Sub-Clause 20.2.1 [Notice of Claim].
- (g) safety statistics, including details of any hazardous incidents and activities relating to environmental aspects and public relations.
- (h) Comparisons of actual and planned progress, with details of any events or circumstances which may jeopardize the completion in accordance with the Contract, and the measures being (or to be) adopted to overcome delays.
- (i) critical path analysis updated to reflect the actual progress of the works.
- (j) S-curve updated to display actual versus early and late planned progress.
- (k) details of all matters affecting, or likely to affect, the cost of the Works and particulars of the preventative and remedial measures which have been, is being, or may be taken in respect of those matters.
- (l) any other matters as may be set out in the Contract or other information reasonably required by the Employer from time to time; and
- (m) such other matters as are required to be included, in accordance with the Employer's Requirements.

The first weekly report shall be submitted within seven days of the Commencement Date and shall be submitted weekly thereafter, within 3 days after the last day of the period to which it relates and include the matters required to be included, in accordance with the Employer's Requirements.

In addition to the progress reports, the Contractor shall prepare environmental reports to be submitted in the same number of copies and at the same time as the monthly progress reports, to cover all specified environmental monitoring including all incidents and issues that have arisen during the period.

If the Contractor fails to submit the progress and environmental reports in accordance with this Sub-Clause 4.20 [Progress Reports] the Employer may at the Employer's sole discretion, withhold payments due to the Contractor until such reports have been submitted.

#### **4.21. No Change**

#### **4.22 Contractor's Operations on Site**

*Between the second and third paragraphs insert the following:*

#### **4.23 No Change**

#### **Insert new Sub-Clauses 4.24 to 4.30 as follows:**

#### **4.24 Fuel Supply**

The Contractor is required to plan and coordinate his total fuel usage at the Works, to satisfy for his total requirements for the duration of the Contract.

For the storage of fuel supply:

- (a) locations and methods for storing fuel at the Site shall be comply with the Employer's Requirements and the applicable Laws of India.
- (b) the Contractor shall provide sufficient fuel storage capacity to provide for performing the Works.

#### **4.25 Parent Company Guarantee**

If applicable, the Contractor shall provide a Parent Company Guarantee, by the ultimate parent company of the Contractor, at the time of signing the Contract Agreement.

If, at any time and for any reason, the Parent Company Guarantee is not enforceable, then the Employer is entitled to suspend any and all payments to the Contractor until the Contractor has provided the Employer with a new, satisfactory and enforceable Parent Company Guarantee from an entity, with sufficient financial standing to guarantee the performance of all of the Contractor's obligations under the Contract. The parent company undertaking form is available in Vol IV

#### **4.26 Import and Customs Laws and Regulations**

In connection with the performance of the Contract, the Contractor acknowledges that the Laws of the Country which may specifically refer to import, and customs regulations shall apply, to the furnishing and shipment of any Plant, Materials, products or components required for the Works. The Contractor specifically acknowledges that the Laws of India may prohibit, among other things, the importation of certain products or components.

#### **4.27 Taxes, Cess, Levies and Duties**

The Contractor shall give all notices and pay all taxes, customs or other import and export duties, rates (including all handling and freight charges, wharfage and harbour dues, shipping and other rates and charges and taxes of whatever nature) required to be given or paid in order to comply in all respects with the provisions of the Law, including but not limited to, any Regulation or Bye Law of any local Government authority which may be applicable in connection with the fulfillment of the Contract.

#### **4.28 Landowners and Access Route Owners**

Notwithstanding any other provision of the Contract, the Contractor shall:

- (a) take all reasonable precautions to prevent damage or deterioration to access routes on, near or to the Site, including all public roads and bridges adjacent to the Site.
- (b) choose transportation routes, select vehicles and distribute deliveries to the Site, so as to minimize the traffic impact in, on or around the Site.
- (c) permit the Landowners and Access Route Owners to have free and unrestricted access to the access routes on, near or to the Site, as and when they reasonably require.
- (d) fully cooperate with the Access Route Owners, in relation to the maintenance of access routes on, near or to the Site and to inform the Employer if he considers that the carrying out of maintenance activities on access routes is materially hindering the Contractor's ability to access the Site.
- (e) fully comply with any use and safety rules imposed from time-to-time by the Access Road Owners.

#### **4.29 Assignment and Novation of Manufacturer's Warranties**

The Contractor shall procure that any warranty, express or implied, with respect to any Plant or Materials used in installation of the Works made or given by the manufacturer, any Subcontractor, any supplier, or any other seller thereof, will be made in favour of the Employer, or will be assigned or otherwise made available to the Employer or such entity that the Employer nominates.

The Contractor must ensure that all warranties given by the manufacturer, Sub-contractor or supplier thereof, or any other seller thereof, will be capable of novation from the Employer to any entity to be nominated by the Employer.

To the extent that the warranties cannot be made in favour of the Employer, assigned or otherwise made available to the Employer, the Contractor agrees (at its cost) to use its best endeavours to enforce such rights as the Contractor may have, for the benefit of the Employer.

This Warranty shall remain valid for 8,000 hours of commercial operation or twenty-four (24) months from the date of Commissioning & Taking Over, after goods or any portion thereof, as the case may be, have been delivered and commissioned to the final destination indicated in the Contract or for thirty-six (36) months after the date of receipt of Last Substantial Consignment of goods at site, whichever period concludes earlier,

unless specified otherwise.

“At the end of the defects liability period set forth above, the Contractor’s liability in respect of the Goods and Works as set forth above shall cease except for the Warranty in respect of the latent defects in the Goods supplied and Works executed (“Latent Defect Warranty”) pursuant to the terms of the Contract.

The Latent Defect Warranty shall be valid and enforceable for a period of twelve (12) months from the date of expiry of the general Warranty in respect of the Goods and Works as set out above. For the purpose of this clause, the ‘latent defect shall mean defects inherently lying within the Goods, materials, equipments or arising out of design deficiency, which do not manifest during the general Warranty period set out herein above.”

The Works shall not be considered to be completed for the purposes of being Taken Over undertaking Over the Works and Sections until the Employer has received such warranties and confirmation that the warranties are capable of novation from the Employer to any entity to be nominated by the Employer.

## **5 DESIGN**

### **5.1 General Design Obligations**

*At the end of the first line of the first paragraph, add the following:*

(Consistent with Best Industry Practice)

*Insert the following paragraphs at the end of this Sub-Clause:*

The Contractor shall at his own expense carryout all investigations, studies, design and preparation of specifications, installation, working, shop drawings and all other things as necessary for the performance of the Works. The design and drawings shall be accompanied by detailed calculations, including design philosophy, references (if any) and standards, and shall be submitted to the Employer, in accordance with Sub-Clause **5.2** [Contractor’s Documents] and the Employer’s Requirements, for approval, before commencement of the Works.

The Contractor shall be responsible for coordinating his detailed design with the other Contractors , failure to do so shall not entitle the Contractor to any extension to any Time for Completion or any additional costs or other compensation.

The design shall be prepared by qualified designers who are engineers or other professionals who comply with the criteria (if any) stated in the Employer’s Requirements. Unless otherwise stated in the Contract, the Contractor shall submit to the Employer for consent the name and particulars of each proposed designer and design Subcontractor.

The Contractor warrants that he, his designers and design Subcontractors have the experience and capability necessary for the design. The Contractor undertakes that the designers shall be available to attend discussions with the Employer at all reasonable times, until issue of the Performance Certificate.



## **5.2 Contractor's Documents**

### **5.2.2 Review by Engineer**

*Delete the sub-paragraph (ii) of the second last paragraph of this Sub-Clause 5.2.2 in its entirety and replace with the following:*

(ii) resubmit it to the Employer for Review in accordance with this Sub-Clause 5.2.2, and the Review Period shall be 15 days calculated from the date that the Employer receives it; The contractor must submit the editable AutoCAD soft files of drawings, BIM Files / Navisworks soft files with 3D models, any other software editable soft files as and when required, calculation sheets etc. to the Employer.

## **5.3 No Change**

## **5.4 Technical Standards and Regulations**

*In the first paragraph delete "the Country's technical standards," and replace with:*

those technical standards referred to in the Employer's Requirements or where no technical standards are referred to in the Employer's Requirements, with accepted international standards approved by the Employer/the Engineer.

## **5.5 No Change**

## **5.6 As-Built Records**

*Replace the last paragraph of this Sub-Clause and replace with following:*

"The number of copies of as-built records to be submitted by the Contractor under this Sub-Clause shall be six (6) hard copies and two (2) electronic of each as built drawing as required under Sub-Clause 1.8 [Care and Supply of Documents]."

## **5.7 No change**

## **5.8 Design Error**

*At the end of this Sub-Clause, add the following:*

The Contractor shall be responsible for any errors, omissions, ambiguities, inconsistencies or other defects in the Contractor's Documents or Drawings, and the approval by the Employer or the Engineer of these documents shall not relieve the Contractor in any way from this responsibility.

With respect to designs prepared by the Contractor on the basis of Drawings, documents or other information which he receives from the Employer or the Engineer, the responsibilities of the Contractor with respect to the correctness of such Drawings, documents or other information and for notifying the Engineer of any errors, omissions, ambiguities, inconsistencies or other defects therein shall be in accordance with Sub-Clause 1.9[Errors in the Employer's Requirements].

**Insert new Sub-Clauses 5.9 as follows:**

**5.9 Warranty by the Contractor**

Warranty provided by the contractor / subcontractor / OEM should be with Employer directly for major components and not back-to-back warranty.

Except as otherwise provided in the Contract, the Contractor:

- (a) warrants that he did not in any way rely upon:
  - (i) any information, data, representation, statement or document made by, or provided to the Contractor, the Employer, or anyone on behalf of the Employer or any other information, data, representation, statement or document for which the Employer is responsible or may be responsible whether or not obtained from the Employer or anyone on behalf of the Employer; or
  - (ii) the accuracy, adequacy, suitability or completeness of such information, data, representation, statement or document, for the purposes of entering into the Contract.
- (b) warrants that he/she enters into the Contract based on his own investigations, interpretations, deductions, information and determinations; and
- (c) acknowledges that he/she is aware that the Employer has entered into this Contract relying upon the warranties, acknowledgements and agreements in this Sub-Clause.

**6 STAFF AND LABOUR**

**6.1 Engagement of Staff and Labour**

*In the first paragraph delete “make arrangements” and replace with:*

“be responsible for making all necessary arrangements”

*Insert the following paragraphs at the end of this Sub-Clause:*

Without limiting this Sub-Clause, the Parties agree that:

- (a) it is a requirement, to the extent practicable that all staff and labour employed in connection with the execution of the Works shall be Indian citizens, unless the Contractor can show that in any particular profession, occupation or trade, Indian citizens are not available in the numbers required in order to perform the Works.
- (b) foreign manpower engaged by the Contractor in relation to the Works shall be limited only to those providing skills required specifically for the purposes of the Works and shall only be employed in connection with the Works, where such manpower and/or skills are not reasonably available within India.
- (c) the Contractor shall be responsible for making all arrangements for, and shall bear all costs of, obtaining of all necessary visas, permits, documents or other official permission for the movement of staff or labour as may be necessary for the purposes of or in connection with the Works.
- (d) the Contractor shall be responsible for returning to the place where they were recruited, or to the country of domicile, all persons that he has recruited and employed

for the purposes of or in connection with the Contract and shall maintain such persons as are to be so returned in a suitable manner until they have left the Site or, in the case of persons who are not nationals of and have been recruited outside India, have left India.

(e) The Contractor shall make all necessary arrangements for the transport, to any place as required for burial, of any of his foreign employees or members or their families who may die in India. The Contractor shall also be responsible, to the extent required by the local regulations, for making any arrangements with regards to funeral of any of his local employees who may die while engaged upon the Works; and

(f) The Contractor shall arrange for the provision of a sufficient supply of suitable food and potable water for all his staff and labour, and his Subcontractors staff and labour, for the purpose of or in connection with the Contract.

(g) The Contractor shall be responsible for keeping discipline on the site and shall obey all policy, labour, health and municipal regulation and all other regulations that may from time to time require his observance and he shall instruct his agent, subcontractors and other employees accordingly. The Contractor shall indemnify the Employer and the Engineer in respect of all claims that may be made against the Employer and the Engineer of non-compliance thereof by the Contractor.

## **6.2 Rates of Wages and Conditions of Labour**

*Insert the following paragraphs at the end of this Sub-Clause:*

The Contractor shall inform the Contractor's Personnel about their liability to pay personal income taxes in respect of such of their salaries, wages, allowances, and any benefits as are subject to taxes under the Laws of India, and the Contractor shall perform such duties in regard to such deductions thereof as may be imposed on him by such Laws.

## **6.3 Recruitment of Persons**

*In the first paragraph after "Employer's personnel" add the following:*

*or the Engineer's personnel*

*Insert the following paragraphs at the end of this Sub-Clause:*

Furthermore, any personnel who is retired or terminated from the service of the Employer or the Engineer, the Contractor shall not hire the said personnel within two years of his/her retirement or termination from the Employer or the Engineer.

The foregoing provision shall not exclude the Contractor from recruiting by means of advertisements place in general circulation media for any other technical or skilled personnel including engineers required for the execution of the Works.

## **6.4 Labour Laws**

*Insert the following paragraphs at the end of this Sub-Clause:*

Subject to any express requirements of this Clause 6 [Staff and Labour], the Contractor shall at all times take all reasonable precautions to prevent any unlawful, riotous or disorderly conduct by or amongst his staff and labour and for the preservation of peace and protection of person and property in the neighbourhood of the Works. The Contractor is obliged to notify immediately to the Engineer of any labour conflict or riot faced by him or his subcontractors that could influence the progress of the Works

The Contractor is solely responsible for the industrial relations of the Contractors

Personnel, including obtaining the necessary residential and work permits, visas, documents and any other clearances and permissions (if any) required, for the movement of staff or labour from place to place and for one country to another, as may be necessary for the purpose of, or in connection with, the Works.

Unless otherwise agreed with the Employer, the Contractor shall recognise the freedom of the Contractor's Personnel to be members of trade unions recognised by the Government of India.

The Contractor shall be responsible for ensuring observance and compliance by his sub-contractors, of the provisions for this Sub Clause.

"The Contractor is encouraged, to the extent practicable and reasonable, to employ staff and labour with appropriate qualifications and experience from sources within the country.

The Contractor is expected to give best efforts to maximize employment of women and local people."

### **6.5 Working Hours**

*Insert the following paragraphs at the end of this Sub-Clause:*

The Contractor shall programme his work and provide sufficient resources to enable all of the works under the Contract to be completed within the normal working hours.

In the event that the Employer gives consent, in accordance with sub-paragraph (b) of this Sub-Clause, to a request from the Contractor to carry on work outside normal working hours (including at night or decreed public holidays) or work is unavoidable or necessary, in accordance with sub-paragraph (c) of this Sub-Clause, for which the Employer's attendance is necessary or deemed necessary by the Employer, then the Contractor will be liable for such sums for the provision of the Employer's supervisory staff.

The Employer shall be entitled to claim payment from the Contractor pursuant to Sub-Clause 20.2 [*Claims for Payment and/or EOT*] for the amount of any additional costs of the Employer's attendance at the Site. The Contractor will be notified of these amounts each month and the Contractor shall pay the amounts to the Employer, within the next following month. Any amounts not paid shall be deducted from the subsequent Interim Payment Certificate until paid.

### **6.6 Facilities for Staff and Labour**

*Insert the following paragraphs at the end of this Sub-Clause:*

The Contractor shall make all necessary arrangements for the transport, to any place as required for burial, of any of his foreign employees or members or their families who may die in India. The Contractor shall also be responsible, to the extent required by the local regulations, for making any arrangements with regards to funeral of any of his local employees who may die while engaged upon the Works.

The Contractor shall, so far as is reasonably practicable, having regard to local conditions, provide on the site, to the satisfaction of the Employer, an adequate supply

of cool potable drinking water, and other water for the use of the Contractor's staff and labour.

The Contractor shall provide and maintain, subject to the approval of the employer ,appropriate accommodation, furnishings, and amenities for all his staff and labour, employed for the purposes of or in connection with the Contract, including all fencing, water supply (both for drinking and other purposes), electricity supply, sanitation, cookhouses, fire prevention and fire-fighting equipment and other requirements in connection with such accommodation or amenities. On completion of the Contract, unless otherwise agreed with the Employer, the temporary camps/housing provided by the Contractor shall be removed and the site reinstated to its original condition, all to the approval of the Employer and at no cost to the Employer.

The Contractor shall arrange for the provision of a sufficient supply of suitable food for all his staff and labour, and his Subcontractors staff and labour, for the purpose of or in connection with the Contract.

## **6.7 Health and Safety of Personnel**

*Between the first and second paragraphs insert the following:*

The Contractor shall (as a minimum) comply with the provisions contained in the Employer's Requirements regarding the Health, Safety and Welfare of, Emergency/Air Evacuation and facilities for, the Contractor's Personnel and their dependents.

The Contractor and the Contractor's employees shall, in carrying out the Works, at all times comply with any health and safety policies and procedures of the Employer and any other health and safety requirements notified by the Employer from time-to-time.

The Contractor shall not employ any workman who are suffering from an infectious disease or are known to be carry of an infectious disease and shall have all workmen engaged on the construction of waterworks certified by a medical officer acceptable to the Employer as a non-carrier of any water borne disease.

*Insert the following paragraphs at the end of this Sub-Clause.*

The Contractor shall ensure that all the Contractor's Personnel are fully conversant with the regulations, policies and procedures, and the Contractor shall enforce the rule that any employee committing a serious breach of such regulations, policies and procedures may be instantly dismissed and may not be re-employed.

If the Contractor fails to comply with any of its health and safety obligations under the Contract (including this Sub-Clause 6.7), the Employer's Requirements or otherwise at Law, the Employer may take whatever action is necessary to remedy such failure and deduct the cost of such action from moneys due or becoming due to the Contractor.

In the event of serious or fatal accidents, the Contractor shall leave unchanged the conditions existing at the place of the accident so that the relevant Government Authorities may proceed with their investigations to ascertain the causes of the accident and carry out any of their statutory duties.

The Contractor shall be responsible for all damage or injury resulting from any failure by

the Contractor to comply with this Sub-Clause 6.7 [*Health and Safety of Personnel*] and shall indemnify and hold harmless the Employer, the Employer's Personnel and their respective agents against and from all claims, damages, losses and expenses (including legal fees and expenses) arising out of or in connection with any failure to comply with this Sub-Clause 6.7 [*Health and Safety of Personnel*].

**6.8 No Change**

**6.9 Contractor's Personnel**

*At the end of sub-paragraph (e) delete "or"*

*At the end of sub-paragraph (f) delete the full stop and add ", or"*

*Add the following sub-paragraph:*

(g) is considered by the Employer to be undesirable or detrimental to the Project.

*Delete the third paragraph in its entirety and replace with:*

The Contractor shall, at its own cost and expense, replace any member of the Contractor's Personnel who is removed in accordance with this Sub-Clause 6.9 [*Contractor's Personnel*], with a competent substitute, approved by the Employer, and shall under no circumstances re-employ any person removed in accordance with this Sub-Clause 6.9 [*Contractor's Personnel*], in connection with the Works, without the consent of the Employer.

In the case of the replacement of the Contractor's Representative, Sub-Clause 4.3 [*Contractor's Representative*] shall apply. In the case of the replacement of Key Personnel (if any), Sub-Clause 6.12 [*Key Personnel*] shall apply.

For the avoidance of doubt, the Contractor shall not be entitled to any adjustment to the Contract Price, any extension to the Time for Completion or Milestone Date, any other relief whatsoever by virtue of the operation of this Sub-Clause 6.9 [*Contractor's Personnel*].

**6.10 Contractor's Records**

*Insert the following paragraph at the end of this Sub-Clause:*

The Contractor's personnel records shall include the name, age, gender, identification number and hours worked and shall be available for inspection by the Employer during normal working hours.

Wages paid to all class of Contractor's personnel shall be made available whenever the Employer requires it.

The records of the Contractor's Equipment shall include a daily record of the status of each major piece of plant and equipment, including operating, standby or under repair. If under repair, the expected date of returning the equipment to operating condition shall be stated together with the availability or otherwise of spare parts.

**6.11 No Change**

## **6.12 Key Personnel**

*Insert the following paragraph after 1<sup>st</sup> paragraph of this Sub-Clause:*

The Contractor shall submit, a Project Management Plan for the Employer's Review and Approval within Twenty-Eight (28) days of the Commencement Date as per the Employer's Requirement.

## **7 PLANT, MATERIALS AND WORKMANSHIP**

### **7.1 Manner of Execution**

*Insert the following paragraphs at the end of this Sub-Clause:*

All Materials and Plant that are intended to be or will be incorporated in the Permanent Works shall be new, unless specified otherwise, and shall conform to the Employer's Requirements. Such Materials and Plant shall not have been used in Temporary Works or for any other prior purpose whatsoever.

The Contractor warrants that all Materials used by the Contractor in carrying out the Works shall be free from defects, of the best quality available and fit for their intended purpose, taking into account local climatic conditions at the Site.

The Contractor shall execute and complete the Works in a manner which ensures the environmental performance of:

- (a) the plant, equipment, materials, and installation methods used, and
- (b) the intended final use of the Works

in accordance with the environmental performance requirements contained in the Employer's Requirements.

### **7.2 No Change**

### **7.3 No Change**

### **7.4 Testing by the Contractor**

*After the second paragraph and before the third paragraph insert the following:*

The Contractor shall submit a Testing Plan for the Works (including any Sections of the Work) in a format acceptable to the Employer, which complies with the requirements of the Contract and the Contractor's quality management system (Sub-Clause 4.9 [*Quality Management and Compliance Verification Systems*]) and the Programme under Sub-Clause 8.3 [Programme]. The Testing Plan shall be submitted in accordance with the same procedure for Contractor's Documents under Sub-Clause 5.2 [*Contractor's Documents*], for the Employer's review and approval.

The Testing Plan shall include a detailed description of:

- (a) the location of the test.
- (b) the types of tests to be carried out and the applicable standards.
- (c) the number and frequency of the tests.
- (d) the test conditions (including normal operating conditions and emergency conditions);
- (e) required attendees at the tests.
- (f) the form of the test results; and
- (g) any other requirements (if any) set out in the Employer's Requirements.

*Insert the following paragraphs at the end of this Sub-Clause:*

The Employer, the Employer's Personnel and any other person nominated by the Employer shall be entitled to be present at any test, including the Tests on Completion and Tests after Completion (if any), and the Contractor shall co-operate with the Employer, the Employer's Personnel and any other representatives of the Employer in this regard.

If the test is undertaken outside the Country, the Contractor shall provide and make all necessary arrangements for the Employer's Personnel to attend and witness all tests undertaken outside the Country and costs therefore shall be deemed to be included in the Contract Price stated in the Contract Agreement.

Notification by the Contractor for inspection and testing which does not afford the Employer sufficient time to obtain visas for the country(s) where inspection or testing will be carried out, shall not be deemed a delay for which the Employer is responsible.

Provided, that as a result of the Contractor's method of working not being in accordance with the Contract, the Employer has reasonable grounds to suspect that any Materials, Plant or workmanship used in any part or parts of the Works may not be in accordance with the provisions of the Contract, the Employer may require the Contractor to carry out any test and/or opening-up of covered works, which in the opinion of the Employer is necessary to verify the quality of such Materials, Plant or workmanship in such part or parts of the works.

The cost of any test and/or opening-up so required shall be borne by the Contractor regardless of whether or not such test or opening-up shows the materials, plant or workmanship to be in accordance with the provisions of the Contract and to the satisfaction of the Employer. The Contractor shall not be entitled to claim any extension of time and/or monies as a result of having to carry out such tests and/or opening-up.

## **7.5 Defects and Rejection**

*Insert the following paragraph at the end of this Sub-Clause:*

At the sole discretion of the Employer, and without in any way relieving the Contractor of



any of his obligations and responsibilities under the Contract, defective Plant, Materials, design or workmanship may be permitted to be retained instead of being removed and re-executed. If additional work is necessary to obviate the necessity for removal and re-execution, such additional work shall be executed at no cost to the Employer and the Contractor shall not be entitled to any extension of time for carrying out the additional work.

Should this discretion be exercised to allow the retention of defective Plant, Materials, design or workmanship, the value of such Plant, Materials, design or workmanship shall be determined in accordance with Sub-Clause 3.7 [Agreement or Determinations] and the Contract Price reduced accordingly.

#### **7.6 No Change**

#### **7.7 No Change**

#### **7.8 Royalties**

*Insert the following paragraphs at the end of this Sub-Clause:*

The Contractor shall pay such prices as levied by the local District Development Committee (DDC), or the Village Development Committee (VDC) and/or other relevant Government authorities that may be in force at the time, for extracting aggregates from the Site, including sand, stone/boulder, gravel, etc. from the riverbeds, and material (if suitable) excavated from the underground works.

The Contractor shall be liable for all payments of compensation, if any, levied in relation to the dumping and/or disposal of any materials, in accordance with any and all local authorities according to the local Self Governance Act, local Self Governance Regulations or other such laws of India as are applicable.

**Insert new Sub-Clauses 7.9 to 7.11 as follows:**

#### **7.9 Sufficient Stock of Materials**

Due to climatic and geological conditions during the wet season the Contractor may encounter problems with access to the Site.

Therefore, having regard to India being landlocked, the remoteness of the Site, climatic and geological conditions, the Contractor shall at all times plan and arrange for sufficient stock of major materials, which including, but not limited to, cement, explosives, detonators, aggregate, sand, reinforcing steel bars, rock support materials, fuel, to provide uninterrupted operations.

Failure to provide sufficient stock at Site or shortage of materials shall be in no case the reasons of claim for extension of time.

## **7.10 Liens**

- a) The Contractor shall not file, register or permit (and shall ensure any Subcontractors, or any employee, servant or agent of the Contractor or Subcontractor do not file, register or permit) any claims, liens, security interest or charges of any nature (Liens) against the Employer's property, the Works, the Materials, any Plant or any portion of the Project without the Employer's prior written approval.
- (b) The Contractor shall indemnify and hold harmless the Employer, the Employer's Personnel and their respective agents against and from all claims, damages, losses and expenses (including legal fees and expenses) arising out of or in connection with the creation of a Lien by the Contractor, any Subcontractor or by any employee, servant or agent of the Contractor or Subcontractor or by any other person whomsoever, which is made, exercised or asserted against the Employer or its property, the Works, the Materials or any Plant.
- (c) In the event that any such lien or security interest should be filed, claimed or registered, the Contractor shall immediately notify the Employer and shall promptly discharge, by bond or otherwise, such lien or security interest.
- (d) Until any lien or security interest is fully discharged, the Employer shall have the right to withhold one hundred and twenty-five per cent (125%) of the full amount claimed giving rise to the lien or security interest from any payments to be made to the Contractor, and such withholding of payment shall not affect the other rights and obligations of the Parties under the Contract. Alternatively, the Employer may discharge the lien or security interest by paying the appropriate amount directly to the relevant person and deduct such amount from further payments to be made to the Contractor pursuant to the Contract.
- (e) On its application for the Taking-Over Certificate, pursuant to Sub-Clause 10 [Employer's Taking-Over] the Contractor shall certify to the Employer, by way of a certificate (the "Release of liens or security interests and claims certificate") that it has no knowledge of any outstanding liens or security interests or claims which may result in liens or security interests affecting the Works or the Site.

## **7.11 Quality**

- (a) The Contractor acknowledges and agrees that quality requirements are essential to the performance of the Contract. In the event that such requirements are prejudiced or may be prejudiced by the improper performance of the Works, and should the Contractor have failed to correct such improper performance of the Works within a reasonable period of time, the Employer is entitled, at the Contractor's sole cost and expense, to enforce such corrective actions as it deems necessary to meet said requirements.
- (b) The Contractor shall:
  - (i) maintain, observe and comply with, for the duration of the Contract, the quality management plan.
  - (ii) ensure that its Subcontractors comply with this Sub-Clause.

## **8 COMMENCEMENT, DELAYS AND SUSPENSION**

### **8.1 No Change**

## **8.2 Time for Completion**

*In the first paragraph after “(if any)” insert:*

and achieved each Milestone/BoQ Item

*In the first paragraph after “or Section” insert:*

or Milestone/BoQ Item

*Insert the following paragraph at the end of this Sub-Clause:*

Complete all work which is stated in the Contract as being required for the Milestone/BoQ Item to be considered completed for the purpose of achieving the Milestone/BoQ Item requirements.

The Time for Completion of a Milestone/BoQ Item (“Milestone Date”) represents the date by which a part of the Works shall be completed and may be handed over, with the agreement of the Employer to the Other Contractors, so that the Other Contractors may proceed with their work.

## **8.3 Programme**

*In the second paragraph after “obligations” insert:*

or as may be required by the Employer

*After the first paragraph and before the second paragraph insert the following:*

In preparing the programme and executing the Works, the Contractor shall:

- i) have regard to any special circumstances applicable to and affecting the Site, including its location;
- ii) liaise with the Employer and/or such others to whom the Contractor may from time to time be referred for planning and programming purposes; and
- iii) ensure, as far as is reasonably practicable, that the Works are fully co-ordinated and integrated with the activities of the Employer and Other Contractor(s) including any activities that are not related to the Works but which nevertheless may affect the execution thereof and which are known or ought reasonably to be known to the Contractor when submitting the Tender; and
- iv) have regard to the fact that the Works form part of a cohesive Project being undertaken by the Employer.

In addition to the above requirements and at the appropriate time as instructed by the Employer, the Contractor shall fully co-operate to produce a plan of work and a Works programme, each for his own activities on and off the site, which take account of all interfacing and interrelated activities between contracts (including Other Contractors and the Employer) to achieve complete coordination and synchronization between the installation of the Works and works under any other adjacent or interrelated contract.

Following the coordination of these joint programmes, the Contractor shall submit to the Employer, a revised programme for installation, testing and commissioning of the Works providing full details of the interfacing and interrelated activities between contracts as stated above. Unless notice is given that the programme does not comply with the requirements of the Employer, this programme shall be deemed to be the programme for the Works.

*In the second paragraph delete "Unless" and replace with:*

Each Programme shall be prepared and submitted by the Contractor in a form acceptable to the Employer and unless

*Delete sub-paragraph (e) in entirety and replace with:*

(e) the sequence and timing of inspections, tests, commissioning and trial operation as specified in the Contract,

*At the end of sub-paragraph (k)(v) delete full stop and replace with comma*

*Insert new sub-paragraphs (l) to (n), which read as follows:*

- (l) details of the arrival of Contractor's Equipment and the Contractor's Personnel at the Site,
- (m) details of the delivery of Plant and Materials and their arrival at the Site, and
- (n) any other information required to be included in accordance with the Employer's Requirements.

*Insert the following paragraphs at the end of this Sub-Clause:*

Failure of the Contractor to submit an programme or any revision thereof may lead to withholding of any payments due to the Contractor until the situation is rectified

The Contractor shall not depart from, or make any changes to, the Works Programme, without the prior consent of the Employer. Any review of, comments upon or consent of, or any failure to review or comment upon, the Works Programme or an amendment to the Works Programme by the Employer shall not relieve the Contractor of, or alter any of its liabilities or obligations under the Contract.

Any revised programme submitted by the Contractor under this Sub-Clause, will not affect or replace the Works programme unless expressly consented to by the Employer in writing.

The submission of, or non-issuance of an Employer's notice of non-compliance to, any programme or revision thereof under this Sub-Clause 8.3 [Programme] shall not in any way relieve the Contractor of any of its warranties, obligations or liabilities under or in connection with the Contract.

#### **8.4 No Change**

#### **8.5 Extension of Time for Completion**

*In the first paragraph between "Extension of Time" and "if" insert:*

or a Milestone/BoQ Item (Milestone Date)

*In the first paragraph between "that" and "completion" insert:*

the Contractor is delayed in achieving

*Insert the following paragraphs at the end of the Sub-Clause:*

The Contractor shall be deemed to have irrevocably waived all of its rights and entitlement to any extension to the Time for Completion if the Contractor has not:

- (i) made reasonable and proper efforts to mitigate such delay, and
- (ii) submitted a proposal in accordance with Sub-Clause 8.14 [*Acceleration Proposal*].

Notwithstanding any other provision of the Contract, the Contractor shall not be entitled to submit a claim for an extension to the Time for Completion, if, the Contractor:

- (i) is already or concurrently delayed in its progress.
- (ii) is delayed because of inadequate work force or faulty workmanship.
- (iii) is delayed in design, manufacture and delivery of the Plant and equipment and Completion of the Works.
- (iv) is delayed in providing or importing plant, equipment, installation materials, due to non-availability due to breakdown, or importation delays of installation plant, equipment and transportation arrangements as a result of the failure to place orders for plant, equipment or materials in sufficient time in advance to ensure delivery when needed; or
- (v) is delayed due to inadequate planning, inefficiency or negligence, etc., by the Contractor, or its subcontractors.

#### **8.6 No Change**

#### **8.7 No Change**

#### **8.8 Delay Damages**

The sum referred to in the second sentence of first paragraph of the Sub-Clause 8.8, shall be the percentage of the Contract Price indicated in the following table as delay damages in respect of the whole of the Works or any Section thereof, payable (per day) in the proportions of currencies in which the Contract Price is payable.

Sl. No.	Milestone Description		Milestones from the date of Notice To Proceed (Days)			Amount of Delay Damages per Day
			Unit # 1	Unit # 2	Unit # 3	
1.	D/T Liner	Supply*	330	365	390	0.05% of Total Contract Price (Supply & services/works) per day of delay
		Erection	420	450	480	0.05% of Total Contract Price (Supply & services/Works) per day of delay
2.	Pressure testing of Spiral Casing	Supply*	420	450	480	0.05% of Total Contract Price (Supply & services/works) per day of delay
		Erection	480	510	540	0.05% of Total Contract Price (Supply & services/works) per day of delay
3.	Assembly of Stator and Rotor in Service Bay	Supply*	450	480	510	0.05% of Total Contract Price (Supply & services/Works) per day of delay
		Erection	540	570	600	0.05% of Total Contract Price (Supply & services/Works) per day of delay
4	Spinning of TG Units	--	630	660	690	0.05% of Total Contract Price (Supply & Services/Works) per day of delay
5.	Synchronization and completion of Trial Run.	--	660	690	730	0.05% of Total Contract Price (Supply & Services/Works) per day of delay

**\* Only to the extent the delay is attributable to the Contractor, and not the Other Contractors.**

In the event of multiple delays to the Times of Completion indicated in Sub-Clause 8.2 [Time for Completion], the maximum amount of delay damages per day shall not exceed 0.075% of the Contract Price.

The maximum cumulative amount of delay damages shall be ten percent (10%) of the Contract Price stated in the Contract Agreement.

*At the end of the third paragraph insert:*

Save for as set out in this Sub-Clause 8.8 [Delay Damages], the Employer's right to claim delay damages shall be without prejudice to any other right which the Employer may have under this Contract or otherwise at Law, in respect of any breach of Sub-Clause 8.2 [Time for Completion] by the Contractor.

The Contractor acknowledges that the amount of delay damages specified in this Sub-Clause is an agreed and genuine pre-estimate of the loss and damage which the Employer may incur in the event of delay. The Contractor shall not raise by way of defence or claim, in relation to the Employer's right to deduct delay damages, any argument that the amount of delay damages is a penalty or otherwise unenforceable.

If the Contractor's obligation to pay delay damages is found for any reason to be void, invalid or otherwise inoperative (other than through the Employer asserting that the delay damages should not be applied) so as to disentitle the Employer from claiming delay damages, the Employer shall be entitled to a claim against the Contractor for damages at Law, resulting from the Contractor's breach of its obligations under Sub-Clause 8.2 [Time for Completion], provided that the Contractor's liability for such damages shall not exceed the amount of the delay damages.

If the delay damages are levied on any section of the work on account of delay Independent Key Date and if the contractor achieves the next Independent Key Date within the specified time, the delay damages already levied for that key date shall be refunded.

If the contractor is granted/approved an Extension of Time (EOT) by the Employer for whatever reasons, the delay damages shall not be applicable on the granted/approved EOT

**8.9 No Change**

**8.10 No Change**

**8.11 No Change**

**8.12 No Change**

**8.13 Resumption of Work**

*Insert the following paragraph at the end of this Sub-Clause:*

The Contractor shall not be entitled to payment for costs incurred in making good any deterioration, defect or loss caused by the Contractor's failure to fulfill its obligations under the Contract including failure to take the measures specified in Sub-Clause 8.9 [Employer's Suspension]

**Insert new Sub-Clause 8.14 as follows:**

**8.14 Acceleration Proposal**

In any circumstance where the Contractor considers that he is entitled to an extension of the Time for Completion in accordance with Sub-Clause 8.5 [*Extension of Time for Completion*]:

(a) the Contractor shall, at the time of submission of the claim for the relevant extension of time, submit written proposals to the Employer regarding the feasibility of acceleration of the Works and stating:

(i) any lump sum which the Contractor will reasonably require to be added to the Contract Price if instructed by the Employer to accelerate the Works pursuant to this Sub-Clause 8.14 [*Acceleration Proposal*], together with details showing the manner of calculation of the lump sum and proposals for the terms of payment thereof, and

(ii) the extent to which the extension of time to be otherwise granted to the Contractor can be cancelled or reduced and the date which as a result would become the revised Time for Completion.

(b) the Employer may:

(i) inform the Contractor that the Employer does not wish to proceed with the acceleration,

(ii) accept such proposal and issue instructions to the Contractor to proceed on the basis of such proposal, or

(iii) request clarifications or variations of the Contractor's proposal (which the Contractor shall then provide to the Employer and following receipt of such clarifications or variations the Employer may proceed in accordance with Sub-Clauses 8.14(b)(i) or 8.14(b)(ii) above or request further clarifications or variations in accordance with this Sub-Clause 8.14(b)(iii)), and

(c) where the Employer instructs the Contractor to proceed with an acceleration, the Employer shall confirm in accordance with the Contractor's proposals:

(i) the amount by which the Contract Price is to be increased to take account of the lump sum quoted by the Contractor or such sum as may otherwise be agreed between the Parties,

(ii) the revised Time for Completion, and

(iii) the details of the acceleration and the alteration of sequence or timing required, and the Contractor shall perform the Works as revised by such instructions.



## **9 TESTS ON COMPLETION**

### **9.1 Contractor's Obligations**

*In the first paragraph between "Sub-Clause 7.4 [Testing by the Contractor]" and "after" insert:*

*“, Sub-Clause 4.9 [Quality Management and Compliance Verification Systems]"*

*In the first paragraph between "documents" and "under" insert:*

*“required to be provided”*

*In the first paragraph between "under" and "Sub-Clause" insert:*

*“the Employer's Requirements, including those referred to in”*

*Insert the following paragraph at the end of Sub-Clause:*

The Contractor acknowledges that the Tests on Completion;

- (a) if required by the Employer, shall be carried out in the presence of any other person nominated by the Employer; and
- (b) shall be coordinated with, or carried out in conjunction with, the Other Contractors.

### **9.2 No Change**

### **9.3 No Change**

### **9.4 No Change**

### **Insert new Sub-Clause 9.5 as follows:**

#### **9.5 Performance Guarantees**

If the Contractor fails to comply with the Performance Guarantees set out in the Employers' Requirements, the Contractor shall subject to Sub-Clause 20.2 [Claims For Payment and/or EOT] pay Performance Damages to the Employer for this default. These Performance Damages shall be as calculated in accordance with the details contained in the Schedule of Performance Guarantees in Contract Data.

The Performance Damages shall be over and above any other damages that the Contractor is liable for in accordance with the Contract. These damages shall not relieve the Contractor from his obligation to complete the Works, or from any other duties, obligations or responsibilities which he may have under the Contract

The Contractor acknowledges that the amount of Performance Damages is an agreed and genuine pre-estimate of the loss and damage which the Employer may incur in the event of the Contractors failure to meet the Guaranteed Performance Levels as set out in Contract Data. The Contractor shall not raise by way of defense or claim, in relation to the Employer's

right to deduct Performance Damages, any argument that the amount of performance is a penalty or otherwise unenforceable.

If the Contractors obligation to pay Performance Damages is found for any reason to be void, invalid or otherwise inoperative (other than through the Employer asserting that the performance damages should not be applied) so as to disentitle the Employer from claiming Performance Damages, the Employer shall be entitled to a claim against the Contractor for such damages at Law, resulting from the Contractor's breach of its obligations under the Guaranteed Performance Levels as set out in Contract Data, provided that the Contractors liability for such Performance Damages shall not exceed the sum stated in Contract Data.

## **10 EMPLOYER'S TAKING OVER:**

### **10.1 No Change**

### **10.2 Taking Over the Works and Sections**

*Insert the following paragraph at the end of Sub-Clause:*

For the purpose of the execution and completion of the overall Project, portions of the Works shall be constructed in stages, in conjunction and concurrently with the Employer's other contractors.

Areas, items of Plant and Equipment handed over to the Employer or the Employer's other contractors to enable either the other contractors to proceed with their works, or to allow the subsequent commissioning and completion of the Project, shall not, under any circumstance be considered to constitute the use, or occupation of any part of the Works, and shall not be grounds for the issuance of a Taking-Over Certificate.

### **10.3 Interference with Tests on Completion**

*Insert the following paragraph at the end of Sub-Clause:*

Testing coordinated with, or carried out in conjunction with, the Other Contractors shall not constitute interference with Tests on Completion, and the Contractor shall not be entitled to an Extension of Time for Completion or Additional Costs for any delay due to the requirement to carry out tests in coordination with, or in conjunction with the Other Contractors.

## **11 DEFECTS AFTER TAKING OVER**

### **11.3 No Change**

### **11.4 No Change**

### **11.5 Extension of Defects Notification Period**

*Delete the second paragraph in its entirety and replace with the following:*

If any item of the Plant and/or Materials have been replaced, repaired or remedied in accordance with Sub-Clause 11.1 [*Completion of Outstanding Work and Remedying Defects*] during the Defects Notification Period, then that item shall be subject to an additional Defects Notification Period of 730 days from the date of completion of such replacement, repair or remedy to the satisfaction of the Employer. However, the Defects Notification Period shall not be extended to more than a total period of 1095 days.

**11.6 No Change**

**11.7 No Change**

**11.8 No Change**

**11.9 Right of Access after Taking Over**

*In the first paragraph, after “the Contractor shall” insert:*

“, subject to the Employer's prior written approval,”

*Insert the following paragraph at the end of Sub-Clause:*

Such right of access shall not be exclusive, and the Contractor shall coordinate such access with the Employer and Other Contractors employed by the Employer.

**11.10 No Change**

**11.11 Performance Certificate**

*In the bullet (a) of the Second paragraph, between “the Contractor’s documents,” and “and” insert:*

including all quality assurance documents, final as-built records, final operation and maintenance manuals and any other design documents.

**11.12 No Change**

**11.13 Clearance of Site**

*At the end of the first paragraph add:*

and shall reinstate all areas disturbed by the Contractor (other than those covered by the Permanent Works) and shall leave the Site in a neat and tidy condition to the satisfaction of the Employer.

**12 TESTS AFTER COMPLETION**

**12.3 Procedure for Tests after Completion**

*Delete sub-paragraph (a) and replace with:*

(a) The Contractor shall be responsible for the provision of all electricity, fuel and materials for the tests.

The Contractor shall provide properly qualified personnel, sufficient supply of all raw materials, utilities, lubricants, chemicals, catalysts and other materials as required, together with all necessary plant and equipment; and shall perform all the works and services of whatsoever nature required to properly carry out the Tests and

Commissioning.

**12.4 No Change**

**12.5 No Change**

**12.6 No Change**

**Insert new Sub-Clause 12.5 as follows:**

**12.7 Non-Performance**

In the event that following the Tests after Completion the Contractor fails to comply with the Performance Guarantees, the Contractor shall be liable to non-performance damages, as per Sub-Clause 12.4(b) [Failure to Pass Tests after Completion], and the Employer shall deduct non-performance damages in accordance with Sub-Clause 9.5 [Performance Guarantees], for such default.

**13 VARIATIONS AND ADJUSTMENTS**

**13.3 Right to Vary**

*Between the second and third paragraphs insert the following:*

In the event of a Variation omitting part of the Works, the Contractor shall have no claim against the Employer (including claim for profit) except in relation to those Costs already incurred by the Contractor in anticipation of carrying out that part of the Works.

However, any works identified by the Employer as being necessary to make the Works fit for the purposes intended, shall not be considered a Variation.

**13.4 No Change**

**13.5 Variation Procedure**

**13.5.1 Variation by Instruction**

*Insert the following paragraph at the end of this Sub-Clause:*

For the assessment of the provisional rate or price, the Employer may request the Contractor and, the Contractor shall provide priced copies of vendor and/or subcontractor quotations, in relation to the costs of any Plant, Materials, labour, equipment not previously set out in or covered by the rates and prices in the Price Schedule and which form the basis of the Contractor's proposal for adjustment to the Contract Price.

**Insert new Sub-Clause 13.3.3 as follows:**

**13.3.3 Cease performance**

If any parts of the Works are omitted by a Variation, then the Contractor must immediately cease performance on such parts of the Works.

**13.6 No Change**

### **13.7 No Change**

### **13.8 No Change**

### **13.9 Adjustments for Changes in Costs**

All the rates and prices shall be firm, fixed and binding throughout the Contract period. Adjustment for Changes in Cost shall not be applicable on any account for any change in the cost of labour, Goods and any other inputs required for the completion of the Works, except in accordance with Sub-Clause 13.6 [Adjustments for Changes in Laws] and Sub-Clause 13.3.2[Changes in the Quantities].

#### **Insert new Sub-Clauses 13.8 and 13.9 as follows:**

### **13.10 Right to Inspect Tender Make-up**

If, in the opinion of the Employer, the rates and prices set out in the Contract are not applicable to determining the value extra or additional work, or for the purpose of determining the value of a Variation or any other matter referred to in the Contract, the Contractor shall allow the Employer to inspect and discuss the make-up of the Contractor's Tender, and the Employer may base his determination on that make-up but shall not be bound to do so. For this purpose, the Contractor shall maintain a copy of the complete make-up of his Tender on Site from the Commencement Date until such time as the Employer advises the Contractor that it is no longer required.

### **13.11 Power of the Employer to Fix Rates**

Provided that no varied work instructed to be done by the Employer pursuant to Clause 13[Variations and Adjustments] shall be valued under this Sub-Clause 13.9, unless within 14 days of the date of such instruction and, other than in the case of omitted work, before the commencement of the varied work, notice shall have been given either:

- (a) by the Contractor to the Employer of his intention to claim extra payment or a varied rate or price, or
- (b) by the Employer to the Contractor of his intention to vary a rate or price

## **14 CONTRACT PRICE AND PAYMENT**

### **14.3 The Contract Price**

*Insert the following paragraph at the end of this Sub-Clause:*

The Contractor shall familiarise himself with the rules and regulations with regard to income tax, customs, duties, other taxes as are applicable under the laws of Government of India, and it will be necessary for him to follow the required procedures regardless of any assistance which may be provided by the Employer.

The Contractor shall pay all duties, taxes, fees and contributions levied in India in Indian Rupees as directed by the relevant governmental department or office or any other authorised local statutory agency or body in accordance with the relevant rules and regulations.

(A) The following special tax condition shall apply to 'advance income tax' under this Contract:

'Advance Income Tax' at the rate of 1.5% of the amount due before the addition of GST, shall be deducted from each payment certificate under the Contract prior to payment to the Contractor. Each of such 'Advance Income Tax' deduction shall be deposited to the concerned tax authorities and copies of the deposit slip will be provided to the Contractor.

*(B) The following special tax conditions shall apply to Customs Duty (import tax) for Contractor's construction equipment and machinery under this Contract:*

i. Contractor's construction equipment and machinery, including their essential tools and spare parts, imported by the Contractor for the sole purpose of executing the Contract which will be exported out of India upon completion of the Works shall be exempt from payment of customs duties levied in India.

ii. In order to be eligible for this exemption the Contractor shall be required to deposit the amount or provide a bank guarantee to the Government of India Customs Department, with a copy to the Employer, equal to the amount of applicable customs duties assessed in accordance with the prevailing laws, rules and regulations of India for those imported items at the time of import. The amounts of the deposits so provided will be refunded, or the bank guarantees cancelled by the India Customs Department, after the submission to the India Customs Department of the re-export certificates with respect to these items issued by the Customs Department.

iii. If the Contractor disposes of any of these imported items in India, he shall pay all customs duties and taxes applicable on such items under the laws and regulations of India in force at that time.

iv. In the event that the value of the imported spare parts for each item of the construction equipment and machinery exceeds 10% of the CIF to port of entry value of the respective item of imported construction equipment and machinery, the Contractor shall be liable to pay all applicable taxes and duties on the import of these imported spare parts.

*(C) The following special conditions shall apply to Registration for Tax under this Contract:*

i. The Contractor and any foreign Subcontractors or Nominated Subcontractors employed on the Works, if not already registered in India, shall be required to be registered with the concerned Inland Revenue Office for the purpose of the Contract. The Contractor shall complete this registration no later than 28 days after the date of signing the Contract Agreement. Certified copies of the Income Tax Registration Certificate(s) shall be submitted to the Employer within 14 days after registration.

ii. The Final Payment Certificate pursuant to Sub-Clause 14.13 shall be issued only after submission by the Contractor to the Employer of an Income Tax Clearance Certificate from the Government of India for himself and any foreign Subcontractors or Nominated Subcontractors employed on the Works.

*(D) The following special tax conditions shall apply to Import Duty and GST for the Equipment, Plant and Materials imported for this Project under this Contract:*

i. GST, is not applicable on import of the metal parts of the Equipment required for the project under this contract.

ii. A special customs duty rate of 1% of the CIF to port of entry value shall be paid on the

Equipment imported by the Contractor for executing the Project under this Contract.

iii. The Contractor shall state separately in his Statements (payment invoices) the amounts paid at this special customs duty rate of 1 % and these amounts shall be reimbursed by the Employer to the Contractor.

#### **14.4 Advance Payment**

*Delete all references to “guarantee” in this Sub-Clause 14.2 and replace with*

“Unconditional and irrevocable bank guarantee”

##### **14.4.1 No Change**

##### **14.4.2 Advance Payment Certificate**

*At the end of Sub-Clause 14.2.2 add the following:*

After the issuance of the Advance Payment Certificate, the Employer shall make the advance payment.

The Employers shall issue Payment Certificate after:

- (a) the Employer has received the Contractor's application for the advance payment under Sub-Clause 14.2.1 [Advance Payment Guarantee]; and
- (b) the Contractor successfully site mobilization with the completion of Detailed Survey, Report Milestone/BoQ and completion of Submission of Designs & Drawings, BOM .

##### **14.4.3 Repayment of Advance Payment**

*Replace sub-paragraph (a) and (b) of this Sub-Clause 14.2.3 with the following:*

The advance payment will be repaid through deductions in interim payments. Deductions shall commence 10% of every interim payment starting from first invoice and GST in the types and proportionate amounts of local currencies of the Advance payment.

*Insert the following paragraph at the end of this Sub-Clause:*

The Advance Payment security shall be in the form of an on-demand and unconditional guarantee acceptable to the Employer, in amount and currencies, issued by a Class "A" commercial bank located in India, or if issued by a foreign bank, it shall be counter guaranteed by a Class "A" commercial bank in India. Such bank guarantee shall remain effective until the advance payment has been completely repaid as specified above.

#### **14.5 Application for Interim Payment**

*Insert the following paragraph at the end of this Sub-Clause:*

The Contractor shall furnish all reasonable assistance as may be requested by the Employer for the purposes of the verification and measurement of the Works, including any necessary means of access, use of equipment, labour and materials, which may include all records and computations made by the Contractor with respect to his own measurement of the quantities of work performed.

The method of measurement shall be in accordance with Bill of Quantities and Technical Specifications

#### **14.6 No Change**

#### **14.7 No Change**

#### **14.8 Issue of IPC**

*At the end of the first paragraph of this Sub-Clause 14.6 add the following*

(c) No amount will be paid by the Employer in connection with the Works unless or until the Employer has received from the Contractor:

- (i) evidence (to the satisfaction of the Employer) of those insurance policies which the Contractor is required to obtain in accordance with Clause 18 [Insurances].
- (ii) all information (if any has been requested by the Employer) required to be provided by the Contractor in accordance with Sub-Clause 4.4(g).

*Insert the following paragraphs at the end of this Sub-Clause:*

Notwithstanding the terms of this Clause or any other Clause of the Contract, no certificate will be issued by the Engineer for claims not approved by the Engineer.

The Engineer shall issue notice within 28 days from receipt of the Contractor's Statement that the Supporting Documentation has not been received and shall not be obligated to make payment against the Contractor's Statement until all supporting documents have been submitted to the Engineer in accordance with the Contract.

#### **14.9 Payment**

*Add the following*

##### **1) For Supply of Equipment**

Payment shall be made in the Currency specified in Contract in the following



manner:

**Payment for Imported Goods**

- i) Advance payment: Ten (10) % of the Supply Contract Price without GST relating to Supply of Goods shall be paid within thirty (30) days after issuance of LOA subject to,
- signing of the Contract Agreement
  - submission by the Contractor of “Performance Bank Guarantee (PBG)” as a security towards performance of the Contract, and
  - submission by the Contractor of an “Advance Bank Guarantee (ABG)” for equivalent amount valid up to sixty (60) days following the planned date of Commissioning of the Generating Units & “Final Acceptance ”.
- ii) On Shipment and delivery: Payment on pro rata basis shall be made against the invoices after deducting advance and retention @10%.i.e. Eighty (80) % of Supply Contract Price + hundred (100) % taxes and duties of Goods shipped shall be paid after proportional deduction of the “Advance Payment” “Deferred Payment” (arising on milestone of Final Acceptance” (FA)), on submission of documents such as.
- 1-original and 3-photocopies of the Manufacturing Guarantee Certificate and Material test certificates.
  - 1-original and 3-photocopies of the Consignment Note and photographs.
  - 1-original and 3-photocopies of the Material Inspection Clearance Certificate MICC issued by Employer.
  - 1-original and 3-photocopies of the Contractor’s Invoice with description, quantity, and price of the Equipment being dispatched.
  - 1-original and 3-photocopies of packing list showing contents of each package.
  - 1-original and 3-photocopies of E waybill
  - 1-original and 3-photocopies of insurance certificates
  - 1-original and 3-photocopies of factory inspection certificate signed by the Employer.
  - 1-original and 3 -photocopies of Physical Verification Certificate issued by

Site Engineer of employer

-1-original and 3 -photocopies Beneficiary's certificate of Origin

- iii) Upon "Final Acceptance (FA)" of equipment by the Employer: The remaining ten (10) % retained amount of Supply Contract Price of Goods along with the applicable GST received shall be paid within thirty (30)days of submission of claim supported by the "Final Acceptance (FA) Certificate" issued by the Employer's representative and subject to validity of the Performance Security and as per clause 14.9(release of retention money)

The payment shall be made against submission of following documents by the contractor.

- 1-original and 3-photocopy of the Contractor's Invoice
- 1-original and 3-photocopy of Final Acceptance Certificate issued by the Employer.

**Payment of Local Currency Portion.**

Payment shall be made in Indian Rupees within thirty (30) days of presentation of claim supported by a certificate from the Employer declaring that Goods have been delivered and that all other Contracted Services have been performed.

**Payment for Domestic Goods:**

Payment for Domestic Goods shall be made as follows:

- i) Advance Payment: Ten (10)% of the Supply Contract Price without GST relating to the supply of Goods shall be paid within thirty (30) days of issuance of LOA subject to,
- Signing of Contract Agreement.
  - submission by the Contractor of "Performance Bank Guarantee (PBG)" as a security towards performance of the Contract, and
  - submission by the Contractor of an "Advance Bank Guarantee (ABG)" for equivalent amount valid up to sixty (60) days following the planned date of Commissioning of the Generating Units &"Final

Acceptance”.

IV) On Shipment and delivery: Payment on pro rata basis shall be made against the invoices after deducting advance and retention @10%. i.e. Eighty (80) % of Supply Contract Price + hundred(100) % taxes and duties of Goods shipped shall be paid after proportional deduction of the “Advance Payment” “Deferred Payment” (arising on milestone of Final Acceptance” (FA)) on submission of documents such as :

- 1-original and 3-photocopies of the Manufacturing Guarantee Certificate and Material test certificates.
- 1-original and 3-photocopies of the Consignment Note and photographs.
- 1-original and 3-photocopies of the Material Inspection Clearance Certificate MICC issued by Employer.
- 1-original and 3-photocopies of the Contractor's Invoice with description, quantity, and price of the Equipment being dispatched.
- 1-original and 3-photocopies of packing list showing contents of each package.
- 1-original and 3-photocopies of e way bill.
- 1-original and 3-photocopies of insurance certificates
- 1-original and 3-photocopies of factory inspection certificate signed by the Employer.
- 1-original and 3-photocopies Physical Verification Certificate issued by site Engineer,
- -1-original and 3 -photocopies Beneficiaries certificate of Origin

V) Upon Final Acceptance of equipment by the Employer: The remaining ten (10)% retained amount of Supply Contract Price of Goods along with the applicable GST shall be paid within thirty (30) days of submission of claim supported by the “Final Acceptance Certificate” issued by Employer's representative and subject to validity of the Performance Security and as per clause 14.9(release of retention money).

The payment shall be made against the submission of following documents by the contractor.

- 1-original and 3-photocopy of the Contractor's Invoice

-1-original and 3-photocopy of Acceptance Certificate issued by the Employer  
Payment of Local Currency Portion.

Payment shall be made in Indian Rupees within thirty (30) days of presentation of claim supported by a certificate from the Employer declaring that Goods have been delivered and that all other Contracted Services have been performed.

## 2) **Payment for Works**

i) Advance Payment: Ten (10) % of the Works Contract Price plus applicable GST for the execution and completion of Works shall be paid within thirty (30) days of issuance of LOA subject.

- signing of Contract Agreement

- submission by the Contractor of "Performance Bank Guarantee (PBG)" as a security towards performance of the Contract, and

- submission by the Contractor of an "Advance Bank Guarantee (ABG)" for equivalent amount valid upto sixty (60) days following the planned date of Commissioning of the Generating Units & "Final acceptance".

ii) On Erection of Equipment: Payment shall be made on prorata basis against the invoices after deduction advance @10% & retention @30% i.e Sixty (60) % of Works Contract Price for the execution and completion of Works shall be paid after proportional deduction of the "Advance Payment" "Deferred Payments" (arising on milestones "Final Acceptance (FA)") within thirty (30) days of submission of claim after erection of the equipment against submission of following documents bythe Contractor

- 1-original and 3-photocopy of the Contractor's Invoice

- 1-original and 3-photocopy of Erection Certificate issued by the Employer.

iii) On Commissioning of Equipment: 20% retained amount shall be paid after proportional deduction of the "Advance Payment" "Deferred Payments" (arising on milestones "Final Acceptance (FA)") within thirty (30) days of

submission of claim after erection of the equipment against submission of following documents by the Contractor

- 1-original and 3-photocopy of the Contractor's Invoice
- 1-original and 3-photocopy of Commissioning Certificate issued by the Employer,

iv) Upon Acceptance by the Employer: The remaining Ten (10) % retained amount of works Contract Price for the execution and completion of Works shall be paid within thirty (30) days of claim supported by "Final Acceptance (FA) Certificate" issued by Employer's representative and subject to validity of the Performance Security and as per clause 14.9 (release of retention money) . The payment shall be made against the submission of following documents by the contractor.

- 1-original and 3-photocopy of the Contractor's Invoice
- 1-original and 3-photocopy of Final Acceptance Certificate issued by the Employer

- 3)** If delivery of any Goods or the execution of any Works is delayed beyond the relevant Milestone date as defined in the Contract, for reasons attributed to the Contractor, any increase in liability on account of inter alia any other taxes/levies and duties of the Union of State, including Service Tax, that may become applicable in delayed period would be borne by the Contractor irrespective of whether extension in time period is granted by the Employer.
- 4)** If material is delivered at Site before the scheduled delivery date, the payment will be made according to schedule delivery date only. No advancement of payment shall be done.
- 5)** Price quoted should only be in Indian Currency and these are FIRM as on the date of Bid Opening and the accepted Contract Price shall remain FIRM for the entire duration of the Contract (including the defects liability period).
- 6)** An escalation in prices of any Goods cannot be held out as a ground for the refusal to supply the said Goods. Any refusal by the Contractor to supply the Goods at the Contract Price, which has been agreed upon and fixed, shall be deemed to be a breach of the Contract. The stoppage of supply of Goods shall entitle the Employer to an interlocutory order directing the Contractor to continue to supply the Goods

at the Contract Price.

- 7) If delivery of any Goods or the execution of Works is delayed beyond the relevant Milestone dates, for any reason whatsoever, any increase/escalation in the inter alia the prices of the raw materials, components or such like during the delayed period would be entirely to the account of the Contractor, irrespective of whether extension in time period is granted by Employer.
- 8) Payment by the Employer of the Contract Price to the Contractor in accordance with this clause shall be to the complete discharge of the Employer in respect thereof and in particular the Contractor shall not be entitled to any other payments or amounts by way of additional monies, sums, fees, charges or otherwise in respect or arising out of the Contract or otherwise.
- 9) The Contract Price shall be deemed to be inclusive of all such taxes, duties, levies, charges, cess and payments etc. and any increase thereon and the Employer shall not be liable to make payment for the same as they may arise or fall-due and are payable under the laws of India in respect of the performance by the Contractor of its liabilities and obligations hereunder. All payments of Contract Price under this clause shall be subject to statutory deductions including deductions of tax at source under the laws of India.
- 10) All bills/invoice should be certified by PMC in respect of quantity and value.

#### **14.10 No Change**

#### **14.11 Release of Retention Money**

*Delete the contents of Sub-Clause 14.9 in its entirety and replace with the following:*

The payment of retention monies shall be as follows:

Refer payment terms above for details on retention money.

For remaining 10% retention money for supply and works will be as follows.

The first half (50%) of the Retention Money shall be paid by the Employer to the Contractor upon issuance of the Final acceptance certificate.

The second half (50%) of the Retention Money shall be paid by the Employer to the Contractor, provided that the Contractor submits to the Employer:

(a) Documentary proof from the Tax Department of Government of India of discharge of all the Contractor's liabilities in respect of Clause 22.9 [*Taxes, Duties, Regulations, etc.*] including corporate income tax on any profits realized from this Contract and of all personal income tax of the Contractor and his personnel, both local and foreign.

(b) Documentary proof from the Customs Department of Government of India of discharge of all the Contractor's liabilities in respect of Clause 22.9 [*Taxes, Duties, Regulations, etc.*] and having removed all duty-exempt Contractor's equipment, materials and plant from India or for Contractor's equipment, material and plant which have been sold in India that duty thereon has been duly paid by the purchaser. (In the case of Materials and Plant incorporated into the Works, no such certificate or payment of duty is required).

#### **14.12 Statement at Completion**

In the second line of first paragraph after the "Engineer" and before "a", insert the following:

Six (6) hard copies and two (2) soft copies

After sub-paragraph (c) add the following sub-paragraph (d):

The Contractor shall submit with the Statement at Completion, documents providing evidence of the payment of the Income tax, from the tax authorities, due under the laws of India with respect to the Contractor's personnel.

#### **14.13 No Change**

#### **14.14 No Change**

#### **14.15 Issue of FPC**

At the end insert the following paragraph:

The Final Payment Certificate pursuant to Sub-Clause 14.13 shall be issued only after submission by the Contractor to the Employer of a Tax Clearance Certificate from the Government of India for himself and any foreign Subcontractors or Nominated

Subcontractors employed on the Works.

#### **14.16 No Change**

#### **14.17 No change**

#### **14.18 Payment of Contractors Personnel and Subcontractors**

Before making a payment to the Contractor the Employer may require the Contractor to give the Employer a statutory declaration by the Contractor that his personnel and Subcontractors who have at any time been engaged on the Works have been paid all moneys payable to them in respect of their engagement on the Works.

If within 7 days after the request the Contractor fails to provide the statutory declaration, the Employer may withhold payment of moneys due to the Contractor until the statutory declaration is received.

If the Contractor provides satisfactory proof of the maximum amount which may be payable to his personnel and Subcontractors, the suspension of payment shall not apply to amounts in excess of the maximum amount.

At the request of the Contractor and out of moneys payable to the Contractor the Employer may on behalf of the Contractor make payments directly to any of the Contractor's personnel or one of his Subcontractors.

If any of the Contractor's personnel or one of his Subcontractors obtains a court order in respect of moneys payable to them by the Contractor in respect of the Works and produces to the Employer the court order and a statutory declaration that it remains unpaid, the Employer may pay the amount of the order, and costs included in the order, to the Contractor's personnel or Subcontractor and the amount paid shall be a debt due from the Contractor to the Employer.

After the making of a sequestration order or a winding up order in respect of the Contractor, the Employer shall not make any payment to any of the Contractor's personnel or Subcontractor without the concurrence of the official receiver or trustee of the estate of the bankrupt or the liquidator as the case may be.

#### **14.19 Set-off**

The Employer may retain or set off any amounts which are or may be payable by the Contractor to the Employer against:

- (a) any debt or other moneys due from the Contractor to the Employer under this Contract; or
- (b) any claim to money which the Employer may have against the Contractor whether for damages or otherwise,

whether under the Contract or on any other legal or equitable basis relating to the Works.

The Employer, in accordance with Sub-Clause 20.2 [*Claims for Payment and/or EOT*] will issue a notice to the Contractor stating the amount to be deducted, the basis of the exercise of the right of set-off, and substantiation of the amount which the Employer considers itself to be entitled to set-off. If the Contractor disputes the amount set-off by the Employer, the Contractor may proceed under Sub-Clause 20.2 [*Claims for Payment and/or EOT*].

The Employer shall deduct the amount from amounts due to the Contractor in the next Payment to be issued.

Nothing in this Sub-Clause affects the right of the Employer to recover from the Contractor the whole of the debt or claim or any balance that remains owing.

This Sub-Clause shall survive any termination of the Contract.

## **15 TERMINATION BY THE EMPLOYER**

### **15.3 No Change**

### **15.4 Termination for Contractor's default**



#### **15.4.1 Notice**

*In the sub-paragraph (e) after "Sub-Clause 4.2 [Performance Security]" add following:*

*"or Sub-Clause 4.27 [Parent Company Guarantee] (if applicable),"*

*At the end of sub-paragraph (g)(ii) delete "or"*

*At the end of sub-paragraph (h) delete full stop and replace with comma.*

*Insert the following sub-paragraphs (i) and (j) as follows:*

- (i) fails to comply with Sub-Clause 1.13 [Compliance with Laws], or
- (j) incurs an amount of delay damages which exceeds the Contractor's maximum liability for delay damages, as set out in Sub-Clause 8.8 [Delay Damages].

#### **15.4.2 Termination**

*In the second paragraph delete "sub-paragraphs (f), (g) or (h)" and replace with:*

*sub-paragraphs (f), (g), (h), (i) or (j)*

*At the end of this Sub Clause 15.2.2, add the following:*

The Employer's election to terminate the Contract, shall not render the Contract void, or release the Contractor from any of his obligations or liabilities under the Contract, or prejudice any other rights or powers conferred on the Employer or the Engineer under the Contract or otherwise.

#### **15.4.3 After Termination**

*In the bullet (i) of the Sub Paragraph (a) of this Sub Clause after "subcontract" insert:*

*to the Employer (or any nominee of the Employer)*

#### **15.4.4 Completion of the Works**

*Af the end of the first paragraph add:*

The Employer or such other entities may use for such completion so much of the Contractor's Equipment, Temporary Works and Materials, which have been deemed to be reserved exclusively for the execution of the Works, under the provisions of the Contract, as he or they may think proper.

Upon the completion of installation, the Contractor shall fully reinstate pathways, other local infrastructure, waterways, buildings, and agricultural land to at least their pre-project condition as recorded by the Contractor in accordance with his obligation.

**15.5 No Change**

**15.6 No Change**

**15.7 No Change**

**15.8 No Change**

**15.9 No Change**

**Insert new Sub-Clauses 15.8 and 15.9 as follows:**

**15.10 Corrupt or Fraudulent Practices**

If the Employer determines that the Contractor has engaged in corrupt, fraudulent, collusive or coercive practices, in competing for or in executing the Contract, then the Employer may, after giving 14 days' notice to the Contractor, terminate the Contract immediately, and the provisions of Clause 15 shall apply as if such termination had been made under Sub-Clause 15.2 [*Termination for Contractor's default*].

Should any employee of the Contractor be determined to have engaged in corrupt, fraudulent or coercive practice during the execution of the work then that employee shall be removed in accordance with Sub-Clause 6.9 [*Contractor's Personnel*].

For the purposes of this Sub-Clause:

(a) "corrupt practice" means the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence the action of a public official in the procurement process or in the Contract execution;

(b) "fraudulent practice" means a misrepresentation or omission of facts in order to influence a procurement process or the execution of the Contract;

(c) "collusive practice" means a scheme or arrangement between two or more tenderers, with or without the knowledge of the Employer, designed to establish tender prices at artificial, non-competitive levels;

(d) "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the procurement process or affect the execution of the Contract.

(e) "obstructive practice" means:

(i) deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede the Employer or a Government Agency investigation into allegations of a corrupt, fraudulent, coercive or collusive practice; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation; or

(ii) acts intended to materially impede the exercise of the Employer, or a Government Agency, and financier's inspection and audit rights.

### **15.11 Taking Over of Contractor's Equipment following Termination**

(a) In the event of termination of the Contract under Sub-Clause 15.2 [*Termination for Contractor's default*], the Employer may, for the purpose of completing the Works, take-over direction of and to use all or any part of the Contractor's Equipment and property of any kind (including Intellectual Property Rights and premises belonging to the Contractor) delivered to, provided or utilised by the Contractor for the performance of the Works.

(b) The Contractor must do all things and execute any documents necessary for the lawful use by the Employer of the Contractor's Equipment and other property.

## **16 SUSPENSION AND TERMINATION BY CONTRACTOR**

**16.3 No Change**

**16.4 No Change**

**16.5 Contractor's Obligations after Termination**

*In sub-paragraph (b) between "received" and "payment" insert:*

"or is entitled to receive"

*At the end of sub-paragraph (b) delete "and" and at the end of sub-paragraph (c) delete the full stop and replace with comma.*

*Insert the following sub-paragraphs (d) and (e) as follows:*

(d) to the extent legally possible, procure the assignment or novation or otherwise to the Employer or an entity nominated by the Employer, all rights, title and benefit of the Contractor to the Works and in the Plant, Materials and other work as at the date of termination; and

(e) remove from the Site any wreckage, rubbish and debris of any kind and leave the whole of the Site in a clean and safe condition.

**16.6 No Change**

## **17 CARE OF THE WORKS AND INDEMNITIES**

**17.3 No Change**

**17.4 No Change**

**17.5 No Change**

**17.6 No Change**

**17.7 No Change**

**17.8 No Change**

**Insert new Sub-Clause 17.7 & 17.8 as follows**

**17.9 Mitigation of Loss or Damage**

In all cases, the Party submitting a claim, establishing or alleging a breach of contract or a right to be indemnified in accordance with the Contract shall be under a duty to take all necessary measures to mitigate the amount of costs increases or the extent of loss which has occurred (as the case may be) provided that that Party can do so without unreasonable inconvenience or cost.

**17.10 Allocation of Risks**

The Contract makes provision under Clause 17 [*Care of the Works and Indemnities*] and 18 [*Exceptional Events*] for the allocation of risks. The Contractor shall note that the extent of the Employers liability under Clause 17 is limited only to rectifying the loss or damage which has occurred to the Works, Goods or Contractor's Documents and other costs that may have been incurred by the Contractor.

The Contractor shall note that the definitions of Employers risks under Sub-Clause 18.1 (a), (b) and (c) shall not include acts of disruption by individuals or groups acting for financial gain or attempting to disrupt the activities of the Contractor, ordinary criminality, thefts, or labour conflicts or any other inconveniences that may occur during peace time working conditions and no claim under Clause 17 will be accepted for such acts.

**18 EXCEPTIONAL EVENTS**

**18.3 Exceptional Events**

*Insert the following paragraphs at the end of this Sub-Clause:*

For the avoidance of doubt, Exceptional Events shall not include any unavailability of Contractor's Equipment, labour or Goods except as may be covered by sub-paragraphs (a) to (f) of 18.1

The Contractor shall note that the definitions of Exceptional Events under this Sub-Clause, shall not include normal acts of disruption by individuals or groups acting for financial gain or attempting to disrupt the activities of the Contractor, ordinary criminality, thefts, or labour conflicts or any other inconveniences that may occur during normal time working conditions and no claim under Clause 18 will be accepted for such acts.

**18.4 No Change**

**18.5 No change**

**18.6 No change**

**18.7 No change**

**18.8 No change**

## 19 **INSURANCE**

### 19.3 **General Requirements**

*Insert the following at the end of this Sub-Clause*

The insuring Party shall submit the documents stated in this Sub-Clause within 30 days from the Commencement Date.

### 19.4 **Insurance to be provided by the Contractor.**

#### 19.2.4 **Injury to Persons and Damage to Property**

*Insert the following paragraphs at the end of this Sub-Clause:*

The Contractor shall conduct his operations in such a manner as to avoid injury or damage to adjacent property, improvements, or facilities.

The Contractor shall be responsible for all damage to streets, roads, highway, direct, embankments, bridges, culverts or other public or private property, which may be caused by transporting equipment, materials, or men to or from the Works. The Contractor shall make satisfactory and acceptable arrangements with the property of owner over the damaged property concerning its repair or replacement.

The Contractor shall be held responsible for all damages which he may cause to land or property outside his necessary working space. Compensation for damage to such land or property will be assessed by the Engineer for settlement by the Contractor through the Employer. The Employer will be entitled to withhold from any payments due to the Contractor's sufficient sums as may appear to him to be necessary to cover the Contractor's liabilities until evidence is produced by the Contractor to the Engineer to show the Contractor's liabilities in this respect have been finally settled and discharged.

Any claim received by the Employer in respect of matters in which the Contractor is required under the Contract to indemnify the Employer, will be passed to the Contractor. The Contractor shall inform the Employer of any claim which is submitted directly to the Contractor by a claimant.

The Contractor shall do everything necessary including notifying the insurers of the claim received, to ensure that claims are settled properly and expeditiously, and shall keep the Employer informed as to the progress made towards settlement.

In the event that the Contractor fails to settle any claims, the Employer shall be entitled to make direct payment to claimants of all outstanding amounts due to them, and without prejudice to any other method of recovery to deduct by way set-off the amounts so paid from any sums due or which become due from the Employer to the Contractor.

#### 19.2.5 **Injury to employees**

*Insert the following paragraphs at the end of this Sub-Clause:*

The benefits payable under the Contractor's insurance policy shall recognize local cultural and economic conditions, and in addition to death and other benefits, will make specific

provisions for repatriation and funeral costs. The terms of this policy shall be made known to the Contractor's Personnel or to their recognized representatives.

**Insert new Sub-Clauses 19.2.7, 19.2.8 & 19.2.9 as follows:**

**19.2.7 Off Site Insurance**

Where the Contract involves manufacturing and/or fabrication of the Works or parts thereof at places other than at the Site, the Contractor shall satisfy the Employer that all Materials and Plant for incorporation in the Works are adequately insured during manufacture and/or fabrication and shipment to the Site. In the event of the Employer having an insurable interest in such Materials and Plant during manufacture and/or fabrication and shipment, then such interest shall be noted by endorsement to the relevant insurance policies.

**19.2.8 Motor Vehicle Liability Insurance**

The Contractor shall without limiting its obligations and responsibilities insure against motor vehicle liabilities under an insurance providing (as a minimum) a Balance of Third Party Risks and Passenger Liability Indemnity' with a limit of indemnify of not less than amount stated in the Contract Data,. This insurance shall be additional to any mandatory insurance required in terms of legislation of India.

**19.2.9 Protection against Cancellations**

In all insurance policies, the cancellation of which, prior to the termination of the period during which they are to be in effect in accordance with the Contract, could result in any risk to the Employer or the Engineer, specific clauses shall be incorporated enjoining the insured, the insurer, and any reinsurer from cancelling such policy without prior written notice by registered mail to the Employer, such notice to be received not less than 28 days previous to cancellation.

In addition, any and all sums or reimbursements made or due from insurance policies, and other security and guarantees as may be established by this Contract shall be made to the account of the eligible Party.

**20 EMPLOYER'S AND CONTRACTOR'S CLAIMS**

**20.3 No Change**

**20.4 Claims for Payment and/or EOT**

**20.2.3** Contemporary records shall be in following categories:

- Programme records, which shall include baseline programme, updated programme, revised programme, sub-network programme and programme narratives
- Progress records
- Resource records, which shall include management, labour, plant, equipment, materials and sub-contractors and their output and productivity rates.
- Cost records
- Correspondence and administration records, which shall include emails, letters, notices, instructions, submittals, request for information and responses, meeting minutes, claims and any other written between the Employer, the Contractor and

the Engineer.

- Any other relevant records

#### **20.2.4 Fully Detailed Claim**

*Delete the (i) of Sub-paragraph (d) in its entirety and replace with:*

“(i) 56 days from the date of submission of the Notice of claim as per Sub-Clause 20.2.1 by the Claiming Party, or”

## **21 SETTLEMENT OF DISPUTES**

### **21.1 Amicable Settlement**

That if any disputes or differences of any kind whatsoever arise between APGCL and the Contractor in connection with or arising out of the Contract, the parties shall seek to resolve any such disputes or differences by mutual consultation between the authorized representatives of both APGCL and the Contractor for amicable settlement of the dispute within a period of ninety (90) days after receipt by one party of the other party's request for such amicable settlement.

### **21.2 Arbitration**

Any dispute, controversy or claim arising out of or relating to this contract or the breach, termination or invalidity thereof, that cannot be settled amicably between both the parties shall be settled by Arbitration.

In any arbitration proceeding hereunder-

- Arbitration shall be in accordance with the Arbitration & Conciliation Act, 1996 or any statutory amendment thereof.
- Arbitration shall be by a sole arbitrator, if agreed upon by the Parties. Failing agreement on the identity of such sole arbitrator, each Party shall appoint one arbitrator, and these two appointed arbitrators shall jointly appoint a third arbitrator, who shall chair the arbitration panel and act as the Presiding Arbitrator.
- In an arbitration proceeding consisting of three arbitrators, if a party fails to appoint an arbitrator within 30 days from the receipt of a request to do so from the other party; or the two appointed arbitrators fail to agree on the third arbitrator within thirty days from the date of their appointment, the appointment shall be made upon request of a party by the High Court or by the President, Institution of Engineers (India), Assam State Center, Guwahati.
- In an arbitration with sole arbitrator, if the parties fail to agree on the arbitrator within 30 days from receipt of a request by one party from the other party to so agree, the appointment shall be made, upon request of a party, by the High Court or by the President, Institution of Engineers (India), Assam State Center, Guwahati.
- The arbitration proceedings shall, unless otherwise agreed by the Parties, be held in Guwahati.
- English language shall be the official language for all purposes.
- The cost of arbitration shall be equally shared among both the parties.
- Decision of the sole arbitrator or of a majority of the arbitrators (or of the third

arbitrator if there is no such majority) and the Arbitral Award shall be final and binding on the parties and the persons claiming under them respectively and shall be enforceable in any court of competent jurisdiction, and the Parties hereby waive any objections to or claims of immunity in respect of such enforcement.

i. The arbitrators and the parties to the arbitration shall maintain confidentiality of all arbitral proceedings except award where its disclosure is necessary for the purpose of implementation, enforcement and setting aside of the award.

### **21.3 Legal Jurisdiction**

Any disputes or differences arising under, out of, or in connection with this contract, shall be subject to the exclusive jurisdiction of courts at Guwahati only.



**Schedule of Performance Guarantees and Performance Damages as per the Sub Clauses 1.1.63, 1.1.74, 9.4, 11.4, 12.4,**

**PERFORMANCE GUARANTEES**

**1. Output and Efficiency**

The turbine output and efficiency requirements apply to the 3 Nos. Horizontal Shaft Francis Type turbines. If the Contractor fails to achieve the Guaranteed Weighted Average Efficiency and/or the Guaranteed Output as detailed in Vol III, the following amounts shall be deducted from payments due to the Contractor under the Contract:

**(a) Turbine Efficiency Guarantee**

If, based on the results of the turbine model test report and CFD analysis, the Contractor fails to achieve the Guaranteed Weighted Average Efficiency with due consideration for the tolerance allowed for measuring, then the Contractor shall be bound to modify the turbine design to attain the guaranteed value.

For any shortfall in tested value of average weighted Turbine efficiency at rated net head from the guaranteed value, penalty shall be applied at the rate of \$2,200 (Two Thousand two hundred US Dollars only) for each unit, for each one hundredth of one percent (0.01%) by which test figure is less than the guaranteed figure, for the Contract. The Employer reserves the right to reject the turbines if the efficiency is less than the guaranteed weighted average efficiency by more than 2%.

No bonus will be given for exceeding the guaranteed values.

**(b) Turbine-Generator Output Guarantee**

If the Contractor fails to deliver the guaranteed turbine-generator (TG) output considering due tolerance, then he shall undertake measures within 182 days to fulfil the guarantee.

If the Turbine does not give the guaranteed maximum output at 10 % overload at rated net head for any reason attributable to the Contractor, Penalty shall be applied at the rate of \$2,200 (Two Thousand two hundred US Dollars only) for each unit, for each one hundredth of one percent (0.01 %), by which the test value is less than the guaranteed value. The Employer reserves the right to reject the turbines if the output deficit is more than 2% of the guaranteed output.

**2. Generator Efficiency**

The generator output and efficiency requirements apply to the 3 No. of synchronous generators.

If the Contractor fails to achieve the Guaranteed Weighted Average Efficiency and/or the

Guaranteed Output as detailed in the completed respective Vol III (Turbine & Aux, Generator & Excitation Chapters), the following amounts shall be deducted from payments due to the Contractor under the Contract:

For any shortfall in tested value of average weighted Generator efficiency from the guaranteed value, penalty shall be applied at the rate of \$2,200 (Two Thousand two hundred US Dollars only) for each unit, for each one hundredth of one percent (0.01%) by which test figure is less than the guaranteed figure, for the Contract.

In case the specified tests prove unsuccessful in meeting the guaranteed values, the Contractor will be given mutually agreed reasonable period to improve or modify or rectify.

Turbine and Generator may be required to meet specified guaranteed figures without extra cost to Employer.

If such attempts to improve or modify or rectify fail, taking remedial action by Employer at Contractor's risk & expense without prejudice to other terms and conditions of contract or imposing of penalty or rejection of the equipment, as the case may be, shall be applied.

Penalty shall be applied at the rate of \$2,200 (Two Thousand two hundred US Dollars only) for each unit, for each one hundredth of one percent (0.01 %), by which the test value is less than the guaranteed value.

The Employer has the right to reject the Turbine if the test values of either average efficiency or the rated output / maximum output at rated head fall below 98 % of guaranteed figures.