

GENERAL CONDITIONS OF CONTRACT

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1 DEFINITIONS AND INTERPRETATION:

1.1 Unless the context otherwise requires the following expressions shall have the meanings hereby assigned to them:

- 1.1.1 'Advance Bank Guarantee' means the bank guarantee to be given by the Contractor to the Owner in accordance with Clause 48.1, in the form set out in Clause 48.
- 1.1.2 'Acceptance' shall mean the approval of the supplies and services provided by the Contractor in performing the complete Scope of Delivery and Work owed by the Contractor pursuant to the Contract. Acceptance is granted by the Owner by signing without reservations the acceptance report.
- 1.1.3 'Acceptance Report' means the reports set out in Clause 44.2.
- 1.1.4 'Affected Party' shall mean the Party claiming Force Majeure under this Contract.
- 1.1.5 'Agent' shall mean a person who agrees and is authorized to act on behalf of another, a principal, to legally bind an individual in particular business transactions with third parties pursuant to an agency relationship.
- 1.1.6 'Bank' has the meaning assigned to it in Clause 48.10.
- 1.1.7 'Business Partners' means a supplier, contractors, sub-contractors, vendors, third party, service providers, surveyors.
- 1.1.8 'Certificate of Substantial Completion' means the certificate signed by the Owner indicating the completion of a milestone defined in the Contract as detailed in Clause 44.4.
- 1.1.9 'Change in the Law' has the meaning assigned to it in Clause 9.2.
- 1.1.10 'Commencement Date' means the date notified under Clause 2, unless otherwise specified in the Contract or during the Kick-off meeting between Parties.
- 1.1.11 'Commissioning': Commissioning shall start by charging feedstock into the Overall Plant; it shall comprise the test run and shall terminate with the Verification of Performance Figures.
- 1.1.12 'Company' shall mean Aarti Industries Limited or AIL.
- 1.1.13 'Conditions' means these General Conditions and the Special Conditions.
- 1.1.14 'Confidential Information' means any and all information and its copies, including but not limited to documentation, scientific, designs, software, prototypes, product, technical or business information, ideas, discoveries, inventions, specifications, formulae, processes, programs, plans, drawings, models, network configuration and rights-of-way, requirements, standards, financial and non-financial data, marketing, trade and manufacturing and know-how secrets, customer lists, prices, as well as any and all intellectual and industrial property rights contained therein and/or in relation thereto; provided however, that Confidential Information shall not include information which (i) is or becomes lawfully in the public domain other than through a breach of any non-disclosure agreement or any confidentiality obligation, (ii) was lawfully in possession of the Contractor prior to disclosure of the Confidential Information, as evidenced by the written records of the Subcontractors and the Contractor's advisors and which was not acquired directly or indirectly from the Owner, (iii) is independently developed by or for the Contractor without reference to or use of Confidential Information, (iv) is lawfully obtained by the Contractor from a third party without violation of a confidentiality obligation, (v) the Owner agrees in writing may be disclosed by the Contractor, or (vi) is required or compelled by law, provided that the Contractor (unless prohibited by law) gives reasonable prior notice to the Owner to allow it to seek protective or other court orders.

- 1.1.15 'Construction Completion Report' means the reports set out in Clause 44.1.
- 1.1.16 'Construction Manager' has the meaning assigned to it in Clause 19.2.
- 1.1.17 'Contract' shall mean agreement entered into between Parties under which this GCC has been issued".
- 1.1.18 'Contract Price' means the all compensation to be paid to the Contractor in accordance with the Contract, in consideration of the Works having been performed and completed by the Contractor as per the requirements under the Contract, payable by the Owner to the Contractor. It may also be read as 'Order Value'.
- 1.1.19 'Contractor' means the Contractor named as such in 'Contract Agreement', and includes its successors and permitted assigns, who carry out the Works and are responsible for the results.
- 1.1.20 'Contractor's Equipment' means all equipment, apparatus and things of whatsoever nature required for the execution and completion of both the Temporary Works and the Permanent Works and the remedying of any defects therein, but does not include Supplier's Equipment.
- 1.1.21 'Contractor's Representative' has the meaning assigned to it in Clause 19.1
- 1.1.22 'Cost' means:
- (a) salaries and wages, including all contributions required under Laws towards any applicable social security scheme or provident fund, reasonably incurred and properly paid or payable to employees of the Party concerned together with reasonable amounts for payroll burden and overheads and administration, but not including any profit; and
 - (b) sums reasonably incurred and properly paid or payable to third parties (excluding employees of the Party concerned) for goods and services supplied for the Works or for discharging contractual liabilities in connection with the Works or for terminating such contractual liabilities.
 - (c) Contractor owns manufacturing costs
- 1.1.23 'Critical Equipment' means the Supplies supplied by the Supplier marked as critical equipment in the Supply Contract.
- 1.1.24 'Defects' has the meaning assigned to it in Clause 46.
- 1.1.25 'Documentation' means any relevant documents depending on the context including, where appropriate, data, plans, specifications, flow sheets, drawings and similar technical documentation in relation to the Project prepared by the Contractor in accordance with Clause 3, and 'Document' shall be interpreted accordingly.
- 1.1.26 'Encumbrance' means any encumbrance such as mortgage, charge, pledge, lien, hypothecation, security interest, assignment, privilege or priority of any kind having the effect of security or other such obligations and shall include without limitation any designation of loss payees or beneficiaries or any similar arrangement under any insurance policy, physical encumbrances and encroachments.
- 1.1.27 'Environmental Laws' mean all Applicable Laws relating to pollution, hazardous substances, hazardous wastes, petroleum or otherwise relating to protection and conservation of the environment, natural resources or human health and includes The Air (Prevention and Control of Pollution) Act, 1981, The

Water (Prevention and Control of Pollution) Act, 1974, The Environment (Protection) Act, 1986, Environment (Protection) Rules, 1986, Hazardous Wastes (Management and Handling) Rules, 1989, and all other ordinances, rules, regulations, notification and orders.

- 1.1.28 'Extended Warranty Period' has the meaning assigned to it in Clause 46.4.
- 1.1.29 'Facilities' means a) something designed, built, installed, etc., to serve a specific function affording a convenience or service, b) something that permits the easier performance of an action or course of conduct
- 1.1.30 'Final Acceptance' means the point in time on which all warranty claims become time-barred, and the Owner confirms that no warranty claims are pending.
- 1.1.31 'Final Certificate' means the certificate signed by the Owner upon Final Acceptance in accordance with Clause 47.
- 1.1.32 'Final Extension Date' means, with respect to the Project, such date as the Owner may prescribe to the Contractor to cure any failure of Performance Guarantees in relation to the Performance Tests.
- 1.1.33 'Force Majeure' has the meaning assigned to it in Clause 23.1.
- 1.1.34 'Free Issue Material' means any spares, tools, tackles and consumables issued by the Owner free of charge to the Contractor, on the terms and conditions detailed in the Contract, for the performance of Services.
- 1.1.35 'Gross Negligence' shall mean a conscious and voluntary disregard of the need to use reasonable care, which is likely to cause foreseeable grave injury or harm to persons, property, or both.
- 1.1.36 'Independent Contractor' shall mean nothing contained in this Contract shall be construed as constituting a joint venture or partnership or other similar relationship between Contractor and the Owner. Contractor is and shall be regarded as an independent Contractor and not an agent of Owner.
- 1.1.37 'Invention' has the meaning assigned to it in Clause 57.
- 1.1.38 'Labour Law' shall mean all Applicable Laws relating to employment and work conditions of labour including The Workmen's Compensation Act, 1923, The Employees Provident Fund Act, 1952, The Employees State Insurance Act, 1948, The Contract Labour (Regulation and Abolition) Act 1970, and The Factories Act, 1948, The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979, The Employees' Provident Funds and Miscellaneous Provisions Act, 1952, The Minimum Wages Act, 1948, The Equal Remuneration Act, 1976, The Payment of Wages Act, 1936, , Apprentices Act 1961, Payment of Bonus Act 1965, Payment of Gratuity Act 1972 & Maternity Benefit Act 1961, Building & Other Construction Workers (Regulation of Employment & Conditions of Service) Act,1996 and Building & Other Construction Workers Welfare Cess Act,1996 and all applicable acts, rules, regulations, notifications, or orders there under.
- 1.1.39 'Laws' means all national (or state) legislation, statutes, ordinances and other laws, and regulations and bylaws of any legally constituted public authority of India.
- 1.1.40 'Liquidated Damages for Delays' means the payment of liquidated damages by the Contractor to the Owner for its failure to comply with Clause 22.1 of the General Conditions of Contract.
- 1.1.41 Mechanical Completion shall mean the milestones marks the completion of construction activities related to all disciplines-civil, mechanical, E&I and completion of installation qualification of all equipment

& construction

- 1.1.42 'Normal Warranty Period' has the meaning assigned to it in Clause 46.
- 1.1.43 Operation & maintenance manual shall mean comprehensive document that provides all the details necessary about a physical plant as well as individual pieces of equipment to help the maintenance staff keep everything running smoothly
- 1.1.44 'Owner' or 'Company' means Aarti Industries Limited
- 1.1.45 'Owner Indemnities' has the meaning assigned to it in Clause 9.1.
- 1.1.46 'Partner' or 'Engineering Partner' means any Engineering or EPCm consultant appointed by Owner
- 1.1.47 'Party' means the Owner or the Contractor, as the context requires and 'Parties' means both the Owner and the Contractor.
- 1.1.48 'Performance Guarantee' has the meaning assigned to it in Clause 45.
- 1.1.49 'Performance Guarantees' means the performance guarantees with respect to the Performance Tests performed in accordance Clause 45.1.
- 1.1.50 'Performance Liquidated Damages' means the damages to be paid by the Contractor to the Owner as set out in the Special Conditions for failing to meet the Performance Guarantees in accordance with Clause 45.6.
- 1.1.51 'Performance Tests' means the performance of the tests in 45.4 where the Plant is operating at 100% of the respective name plate capacity for a minimum period of 1 week or as defined by Owner separately, in a stable mode.
- 1.1.52 'Permanent Works' means the works of a permanent nature (including Plant) to be executed in accordance with the Contract.
- 1.1.53 'Plant' means machinery, apparatus and the like (including the Supplies) intended to form or forming part of the Permanent Works.
- 1.1.54 'Plant Contractors' means the other Contractor's appointed by Owner to render services in connection with the Plant.
- 1.1.55 Plant Facilities means any facility or service which is owned or operated by AIL for execution of projects
- 1.1.56 'Pricing Schedule' means the schedule of payment to the Contractor pursuant to the terms of this Agreement.
- 1.1.57 'Preparation of Commissioning shall be the Day of Mechanical Completion of the Unit shall be followed by the Preparation of Commissioning of the Unit. This shall include all the organizational, operational, technical and safety-related work that still needs to be carried out by the Contractor prior to Commissioning of the Unit. The Preparation of Commissioning shall also include the training and instruction of the Owner's operating and maintenance personnel by the Contractor. The Preparation of Commissioning shall be considered complete as soon as feedstock can be charged into the Unit.
- 1.1.58 'Progress Schedule' means the progress schedule set out in – PROGRESS SCHEDULE

which the Contractor agrees to meet in order to finish the Works by the Time for Completion

- 1.1.59 'Project' means has the meaning assigned to it in – CONTRACT AGREEMENT.
- 1.1.60 'Project Milestones' means the project milestones set out in – PROGRESS SCHEDULE.
- 1.1.61 'Project Plan' means the plan (if any) attached in the Contract. 'Project Site' means the plot of land upon which the Plant is to be erected and any project-related storage or lay-down area, including off-site facilities designated by the Owner.
- 1.1.62 Project Site mean an area/location in which Owner has its projects or operation which includes common areas like GIDC roads
- 1.1.63 'Running Account Bill' means the Bill(s) submitted by the Contractor on monthly basis for the work(s) carried out during the immediately preceding month.
- 1.1.64 'Quality Plan' means a document, or several documents, that together specify quality standards, practices, resources, specifications, and the sequence of activities relevant to a particular product, service, project, or contract
- 1.1.65 "Scope of work " shall mean scope as defined in Annexure - A of the Contract.
- 1.1.66 'Section' means a part of the Works specified in the Special Conditions as a section (if any).
- 1.1.67 'Service(s)' means all services performed or provided by the Contractor under or pursuant to this Contract.
- 1.1.68 'Special Conditions' means the special conditions set out in – SPECIAL CONDITIONS OF CONTRACT issued as part of the Contract.
- 1.1.69 'Specifications' means the Specifications annexed to – DRAWING AND SPECIFICATIONS issued as a part of the Contract and which sets out the technical definition of the Plant including any modifications or additions thereto as may from time to time be issued or approved in writing by the Partner.
- 1.1.70 'Subcontract' means a document (other than the Contract Documents) governing the appointment of a Subcontractor.
- 1.1.71 'Subcontractor' means any natural person or any legal person or entity to whom the preparation of any design or the execution of any other part of the Works (including the supply of Supplies) is subcontracted by the Contractor.
- 1.1.72 'Suppliers' means the person(s), firm(s) or company(ies) to supply Supplies as appointed by the Owner or its agent.
- 1.1.73 'Supplier's Equipment' means all equipment, materials, machinery, apparatus and other equipment, and other things supplied by the Supplier in relation to the Project as appointed by the Owner or its agent.
- 1.1.74 'Supply' or 'Supplies' means any and all equipment and materials such as but not limited to spare parts, consumables, special tools, machinery, and materials required for the Plant and/or the Works.
- 1.1.75 'Supply Contract' means the contract awarded to the Suppliers for the procurement and supply of Supplies required for the Works as appointed by the Owner or its agent.

- 1.1.76 'Tender' means the Contractor's signed offer for the execution and completion of the Works and the remedying of any defects therein in accordance with the Contract, and shall include all other documents which the Contractor submitted therewith.
- 1.1.77 'Test Run' shall mean the gradual start-up of the Unit to the level of its intended operation and the running of the Unit under the conditions of intended operation.
- 1.1.78 'Time for Completion' means the time for completing the Works calculated from the Commencement Date.
- 1.1.79 'Temporary Works' means every kind of works or structures of temporary nature (including offices, sheds, residential accommodations and canteens, other than Construction Equipment) built on the Plant by the Contractor, with the prior written permission of the Owner, required or provided in or about the execution of the Works and the remedying of any defects therein.
- 1.1.80 'Tools and Tackles' shall mean the tools and tackles, other than those forming part of the Free Issue Materials, which are required to be provided by the Contractor in accordance with the provisions of the Scope of Services.
- 1.1.81 'Unit' shall mean the plant including all plant components listed in the Technical Data Sheet, as well as all associated components required for the intended operation of the Unit.
- 1.1.82 'Variation' means a variation to the Works by the Owner in accordance with Clause 27 or by the Contractor in accordance with Clause 28.
- 1.1.83 'Verification of Performance Figures' shall mean that the Unit will operate in conformity with the conditions specified in the Technical Data Sheet and include the verification of the specified and guaranteed performance figures. The Verification of Performance Figures shall be documented by the Owner, and be followed by the Acceptance, if its result is positive.
- 1.1.84 'Warranty Period' means the Normal Warranty Period, cumulatively or individually, as the case may be as mentioned in clause 46.1.
- 1.1.85 'Works' means all the works and services being in the Contractor's Scope of Work including all Temporary Works and Permanent Works and shall also be read as 'Project Site'.
- 1.2 In the event the Contractor becomes aware of any error, omission, discrepancy, inconsistency, conflict or ambiguity in or between the documents forming the Contract, he shall immediately notify the Owner of the same, which notification shall include proposals to the Owner to resolve such error, omission, discrepancy, inconsistency, conflict or ambiguity fairly and constructively without adversely affecting the agreed cost or time for completion or quality of the Works. The Owner shall, within ten (10) days' receipt of the written notification review the Contractor's request and if necessary issue appropriate written instructions to the Contractor to rectify the said error, omission, discrepancy, inconsistency, conflict or ambiguity. The Contractor shall be obliged to comply with the Owner's decision. The Contractor shall be obliged to indemnify the Owner in accordance with Clause 9 any costs or expenses incurred by the Owner arising out of or in connection with the Contractor's failure to discern and/or notify the Owner of such error, omission, discrepancy, inconsistency, conflict or ambiguity within a reasonable time.
- 1.3 The singular shall include the plural and the plural the singular unless the context otherwise requires.
- 1.4 No approval or consent required to be obtained under the Contract shall be unreasonably refused or delayed.

- 1.5 Day shall mean a calendar day.
- 1.6 References to a statutory provision include any subsidiary legislation made from time to time under that provision. References to a statute or statutory provision include that statute or provision as from time to time modified, re-enacted or consolidated, whether before or after the date of the Contract, so far as such modification, re-enactment or consolidation applies or is capable of applying to any transaction entered into in accordance with the Contract and (so far as liability thereunder may exist or can arise) shall include also any past statute or statutory provision (as from time to time modified, re-enacted or consolidated) which such statute or provision has directly or indirectly replaced.
- 1.7 The words 'include' or 'including' shall be deemed to be followed by 'without limitation' or 'but not limited to' whether or not they are followed by such phrases or words of like import.
- 1.8 Unless provided otherwise, in these General Conditions, the words 'Clause' shall be read as references to the Clauses of these General Conditions.
- 1.9 In the event of any inconsistency between these General Conditions and the terms in the Special Conditions, the terms in the Special Conditions shall prevail.
- 1.10 Parties mutually agree that all dealings pursuant to this Contract have been and shall be at arm's length, and both parties have been afforded the opportunity for legal consultation and negotiations. This Contract will in all events be construed as a whole, according to its fair meaning, and not strictly for or against a party merely because that party (or the party's legal representative) drafted the Contract or a clause therein.
- 1.11 Parties agree that the interpretation of the terms and construction of this Contract shall not be construed more severely against one of the Parties than against the other.
- 1.12 Where reference is made to "Owner" in this Contract, unless the context does not permit so, "Owner" shall include the Owner and the Partner acting as its agent.

2 EFFECTIVE DATE / COMMENCEMENT DATE

Effective date shall mean date when Contract has been entered into between Parties to this GCC. The date on which this Contract shall become effective and the Parties shall become bound by all conditions applicable to their conduct. Unless otherwise stated in Special Conditions or in any other document, the Contractor shall be given not less than seven (7) days' notice of the Commencement Date and, not later than that Commencement Date, the Contractor shall commence the design and execution of the Works and shall then proceed with the Works with due expedition and without delay. The validity/ term of the Agreement shall be as defined in Contract.

3 PRIORITY AMONG CONTRACT DOCUMENTS

- 3.1 Subject to the order of precedence as set out in Sub-Clause 3.2 below, all documents forming part of the Contract are intended to be correlative, complementary and mutually explanatory. The Contract shall be read and construed as a whole document.
- 3.2 For the purpose of interpretation, the priority of the documents shall be in the following sequence:
- (a) The Contract including all Schedule/s and Annexure/s;
 - (b) Special Conditions of Contract including all Annexure(s) thereto;
 - (c) Scope of Service/ Technical Specification including all Annexure(s), Schedule(s) & Drawing(s), etc.;

- (d) General Conditions of Contract including all Annexure(s); and
- (e) OHS Manual.

3.3 The Contractor is deemed to have full knowledge and understanding of the contents of all the Contract Documents whether contained in or incorporated by reference thereto, and shall have accepted all the terms and conditions contained therein. The Contractor confirms that all ambiguities or conflicts between any of the Contract Documents have been clarified with the Owner as recorded in this Contract and there is no further ambiguity or conflict in respect of any of the Contract Documents.

4 PURPOSE AND LICENSE

4.1 The Plant and Plant Facilities (including the information furnished by the Owner in relation to the same) are provided to the Contractor for performance of the Services on a 'as is where is' basis. The Owner does not make any representation or warranty to the Contractor in respect of the condition of the Plant, the Plant Facilities or any information furnished in relation thereto. The Contractor is expected to undertake a tour of the Plant and review the engineering details of the Plant Facilities to ensure himself of the effort required to deliver the Services and achieve the Service levels as specified in the SCC/ Contract.

4.2 In consideration of the Contractor agreeing to perform the Services in accordance with the terms of the Contract , the Owner grants to the Contractor, on a 'as is where is' basis, the [exclusive] right to enter upon, occupy and use the Plant and Plant Facilities for the sole purpose of performing the Services in accordance with the provisions of the Contract Documents for the Term. The aforesaid right shall be effective from the Effective Date. The Contractor shall not use the Plant or the Plant Facilities for any purpose other than for the purposes of performance of the Services.

4.3 The Contractor shall ensure that in the execution of the Services, no Persons other than the Contractor, Manpower, , shall be allowed on the Plant, other than by obtaining permission, in writing, from the Owner's Representative. Notwithstanding anything in this Contract, the Owner, Owner's Personnel, Owner's Representative, and Affiliates shall have unfettered and unobstructed access to the Plant or Plant Facilities at all times shall be accorded by the Owner and representatives of the Owner

4.4 The Contractor shall ensure that the performance of the Scope of Services at the Plant shall be performed without any interference to Owner, Owner's Personnel.

5 OBLIGATIONS & RESPONSIBILITIES OF CONTRACTOR

5.1 Carry out and Complete the Works: The Contractor shall carry out and complete the Works in accordance with the provisions of the Contract in consideration of the payment by the Owner of the Contract Price within the Time for Completion. Subject, and without prejudice to any higher standards required of the Contractor under any other provision(s) of the Contract, all work carried out by the Contractor under the Contract shall be executed with sound workmanship and materials, safely and in accordance with good engineering practice and applicable regulations, in compliance with agreed Scope of work, safety standards/ guidelines/ manuals of AIL and shall be to the satisfaction of the Owner and shall implement and conform with the quality management system requirements.

5.2 Notwithstanding anything to the contrary in this Agreement/PO/WO, the Contractor shall terminate in their entirety/discharged from the duties from the Plant / Site of Owner on observation of following: (i) fraud on or misappropriation of any funds or (ii) breach by Contractor of any provision of any employment, non-disclosure, non-competition, non-solicitation, assignment of inventions, or other similar agreement executed by Owner for the benefit of the Company, as determined by the Administrator, which determination will be conclusive (iii) any incident WRT Sexual harassment at the workplace results in violation of the fundamental rights of a woman - to equality under Articles 14 and

15 of the Constitution of India, to life and to live with dignity under article 21 of the Constitution, to practice any profession or to carry on any occupation, trade or business which includes a right to a safe environment free from sexual harassment. Contractor shall report immediately to the Engineer In-charge and HR dept. of Owner in writing on observation of the incident, report every day on the investigation, finding and action taken. Contractor shall prepare detailed report and submit to the Owner. Contractor shall be liable to follow POSH (Prevention of Sexual Harassment) policy of AIL if working in AIL's premises (iv) Breach of AIL policies or code of conduct, (v) breach of anti-bribery or corruption laws, (vi) breach of third party IPR or confidential information, and (vii) breach of AIL SHE standards and Safety guidelines at site.

- 5.3 Compliance of Works: The Contractor undertakes that the execution and the completed Works shall in every respect be:
- (a) in accordance with the Laws of India;
 - (b) in accordance with the documents forming the Contract, as altered and modified by Variations; and
 - (c) in every respect fit for the purpose for which it was intended as defined in the Specification in accordance with the requirements of the Contract or in any other contractual provision.
 - (d) Sustainability: business partners shall be liable to comply with the sustainable policy of AIL in place.
- 5.4 Necessary Changes: If at any time during the performance of the Contract, the Contractor is of the opinion that a change in the design, execution or operation of the Works:
- (a) is necessary to eliminate a potential defect in the Plant or a specific hazard to any person or party in the performance of the Works or in the operation of the Plant which has occurred or would otherwise occur; or
 - (b) would be beneficial to the Owner, then the Contractor shall submit for the Owner's approval a written proposal for such change. The written proposal shall state the reasons with the Contractor's opinion
- In the event of any change in Drawing/Specification. Contractor shall notify Project head/ Incharge/ CPrH/ Group head inform in writing of Owner within 72 hours in writing.
- 5.5 Maintaining Resources: The Contractor shall at all material times have and maintain resources (including financial resources) adequate to execute the Works. The Contractor shall at intervals of not more than thirty days' report in writing to the Owner on the progress of the Works in accordance with relevant Progress Schedule, supporting its reports with appropriate Documentation. The Contractor shall immediately advise the Owner when additional work is required which the Contractor considers to be outside the scope of the Works stated before commencing with such additional work.
- 5.6 Independent Contractor: The Contractor in performing its obligations under this Contract shall at all times act as an Independent Contractor on its own account and shall no authority to act as an agent to the Company. Neither the Contractor nor any Subcontractor nor any person employed by the Contractor or any Subcontractor (whether directly or indirectly) in respect of the Works shall be, or be deemed to be, an employee or agent of the Company and shall have no authority to bind the Company or any of its Affiliates or any of the Co-ventures in any manner whatsoever.
- 5.7 Service Standards
- (a) The Contractor shall perform the Services in accordance with the provisions of the Contract Documents, Operation and Maintenance Manuals; the Owner's Safety Standards and the Instructions and undertakes to perform the Services in a manner that it complies with the Performance Parameters. If the Contract provides for different standards of services, the Contractor must provide those of the highest or most stringent standard.
 - (b) The Contractor shall make all efforts to maximize operations at the Plant and ensure minimum

outages or any other unavailability of the Plant Facilities so as to achieve optimal utilization of the Plant Facilities and safe, smooth and uninterrupted generation of power at the Plant.

- (c) In the event the Owner determines, whether from the inspection or from the reports received from the Contractor, that the Services are being or have been rendered in a Defective manner or do not comply with the provisions of the Contract Documents and/or the Performance Parameters, the Contractor shall, at no cost to Owner and upon intimation from the Owner promptly, provide its plan to rectify or correct the provision of Services in the future such that the Services comply with the Performance Parameters. The plan may include, *inter alia*, mobilization of more Manpower or deployment of Manpower with specific skills sets, expertise and experience, use of specialized equipment, tools or tackles, and conducting training and development of Manpower. For the avoidance of doubt, all the above plans and activities shall be executed by the Contractor without any cost to the Owner and shall be without prejudice to the right of the Owner to levy Liquidated Damages.
- (d) Without prejudice to any other rights of the Owner under the Contract Documents and the Applicable Law, the Owner shall be entitled to levy Liquidated Damages if the Services fail to meet the Performance Parameters. The methodology for calculating the Liquidated Damages is more particularly set out in the SCC/ Contract. Contractor agrees that Liquidated Damages for the failure to meet the Performance Parameters, which are set out in the SCC/ Contract are reasonable estimate of damages which may be suffered by Owner and are intended to compensate Owner for the delayed, poor and insufficient performance of Service by Contractor and non-compliance with the Contract, and are not a penalty. Owner may, at its sole discretion, and without prejudice to its right to recover Liquidated Damages by any other method of recovery, deduct the amount of such Liquidated Damages from any monies due or which may become due to Contractor under the Contract Documents. The payment or recovery of Liquidated Damages shall not relieve Contractor from any of its other obligations and liabilities in law or under the Contract.
- (e) In the event that the Owner determines that Services performed by the Contractor have exceeded the Performance Parameters, it shall pay Performance Bonus to the Contractor if agreed under the SCC/ Contract.

5.8 Maintenance of Plant Facilities

- (a) Contractor shall utilize the Plant Facilities in a manner that it does not pose any risk of forfeiture, limitation, dilution or restriction on the warranties of the manufacturer/suppliers, if any, of the Plant Facilities. The Contractor hereby agrees to follow all the Instructions of the Owner Representative nominated by the Owner in relation to the maintenance and upkeep of the Plant Facilities, failing which the Contractor shall be liable to indemnify, defend and hold the Owner harmless against all Losses incurred and arising out of, connected with or relating to such non-compliance.
- (b) The Contractor shall, at its cost, repair as necessary and maintain the Plant Facilities or any part thereof in accordance with the Operation and Maintenance Manual and Good Industry Practice and for this purpose carry out routine preventive inspections, measures and maintenance of the Plant Facilities. In the event that any part of the Plant or any of the Plant Facilities are lost, damaged or destroyed for reasons attributable to the Contractor (or its Subcontractor(s)), the Contractor shall at its cost and promptly and diligently, repair, replace and/or restore such part of the Plant and/or Plant Facilities. Any such cost incurred in cost repair etc, shall be deducted from Performance Bank Guarantee.
- (c) The Contractor shall ensure that there is minimal disruption to the provision of Services during the normal course of services (as well as in case of any accidents) by providing an effective response and emergency management team.

- (d) Contractor shall maintain all survey marks, boundary marks, distance marks, and centre line marks, whether existing or supplied or fixed by Contractor.

5.9 Safety and Security Arrangements

- (a) Contractor shall observe and comply with, and cause the Manpower, and the Subcontractors to observe and comply with, all Applicable Laws, and AIL safety standards relating to fire, safety and security, Owner's Safety Standards and related Instructions and security regulations/procedures specified by the Owner as per the OHS manual, and/or Governmental Authority from time to time. Contractor shall impart training to its Manpower at regular intervals on the Owner's Safety Standards and security policies undertake all precautions and measures that are necessary to protect all Services, Plant, Plant Facilities, from any damage, loss or hazard.
- (b) The Contractor shall ensure proper safety of the Plant, Plant Facilities, Manpower, materials, Tools and Tackles, Free Issue Material, and equipment belonging to the Contractor or to the Owner or to any other Person, working at the Plant. The Contractor shall also be responsible for provision of all safety notices and safety equipment required both by the relevant legislation and the Owner, as he may deem necessary.
- (c) The Contractor shall at all time and at its own cost take sufficient precautions to ensure the safety of public and guard the Plant and Plant Facilities as deemed necessary.
- (d) The Contractor will notify well in advance to the Owner of its intention to bring to the Plant any container filled with liquid or gaseous fuel or explosive or petroleum substance or such chemicals, which may involve hazards. The Owner shall have the right to prescribe the conditions, under which such container is to be stored, handled and used during the performance of the Services and the Contractor shall strictly adhere to and comply with such instructions. The Owner shall have the right at its sole discretion to inspect any such container or such construction plant/equipment for which material in the container is required to be used and if in its opinion, its use is not safe, the Owner may forbid its use on or around the Plant. No claim due to such prohibition shall be entertained by the Owner and the Owner shall not entertain any claim of the Contractor towards additional safety provisions/conditions to be provided for the Plant Facilities as per the Owner's instructions.
- (e) Further, any such decision of the Owner shall not, in any way, absolve the Contractor of its responsibilities and in case, use of such a container or entry thereof into the Plant area is forbidden by the Owner, the Contractor shall use alternative methods with the approval of the Owner without any cost implication to the Owner or extension of work schedule/ Contract Period/ Term.
- (f) Where it is necessary to provide and/or store petroleum products or petroleum mixtures and explosives, the Contractor shall be responsible for carrying-out such provision and/or storage in accordance with the rules and regulations laid down in the relevant legislations including the Petroleum Act 1934, Explosives Act, 1948, and Petroleum and Carbide of Calcium Manual published by the Chief Inspector of Explosive of India. All such storage shall have prior approval of the Owner. In case, any approvals are necessary from the Chief Inspector (Explosives) or any other statutory authorities, the Contractor shall be responsible for obtaining the same.
- (g) All equipment shall be used by Contractor shall meet Indian/International Standards and where such standards do not exist, the Contractor shall ensure these to be absolutely safe. All equipment's shall be strictly operated and maintained by the Contractor in accordance with manufacturer's operation manual and safety instructions.
- (h) Periodical examinations and all tests for all lifting/hoisting equipment & tackles shall be carried-

out in accordance with the relevant provisions of Factories Act 1948, Indian Electricity Act, 1910, and associated laws/rules in force from time to time. A register of such examinations and tests shall be properly maintained by the Contractor and will be promptly produced as and when desired by Owner or by the Person authorized by Owner.

- (i) The Contractor shall provide suitable safety equipment of prescribed standard to all employees and workmen according to the need, as may be directed by Owner who will also have right to examine this safety equipment's to determine their suitability, reliability, acceptability and adaptability.
- (j) Where explosives are to be used, the same shall be used under the direct control and supervision of an expert, experienced, qualified and competent person strictly in accordance with the code of practices / rules framed under Indian Explosives Act pertaining to handling, storage and use of explosives.
- (k) The Contractor shall provide safe working conditions to the Manpower, and the Subcontractors Personnel at the Plant including safe means of access, railings, stairs, ladders, scaffoldings etc. The scaffoldings shall be erected under the control and supervision of an experienced and competent person.
- (l) In case any accident occurs during the site work undertaken by the Contractor thereby causing any minor or major or fatal injury to the Manpower, or Subcontractor's Personnel, Plant Contractor's personnel or Owner's Personnel or any other person present at the Plant, due to any reason, whatsoever, it shall be the responsibility of the Contractor to promptly inform the same to the Owner in prescribed form and also to all the applicable Governmental Authorities. In such case Owner reserves the right without limiting its rights under Applicable Law and Contract, to remove the Manpower or the Subcontractor's Personnel responsible for such accident in addition to other actions against the Contractor in the event of lapse of safety at the measures at Plant, including levy of damages.
- (m) The Owner shall have the right at its sole discretion to stop the work, if in its opinion the work is being carried out in such a way that it may cause accidents and endanger the safety of the Manpower, and/or property, and/or equipment's. In such cases, the Contractor shall be informed in writing about the nature of hazards and possible injury/accident and the Contractor shall comply to remove shortcomings promptly. The Contractor after stopping the specific work can, if felt necessary appeal against the order of stoppage of work to the Owner within three (3) days of such stoppage of work and decision of the Owner in this respect shall be conclusive and binding on the Contractor.
- (n) The Contractor shall not be entitled for any damages/compensation for stoppage of work due to safety reasons and the period of such stoppage of work will not be taken as an extension of time for Completion of the Services and will not be the ground for waiver of levy of liquidated damages.
- (o) The Contractor shall be liable to pay the penalty as per the OHS Manual to the Owner in case of occurrence of any incidents or accidents, unless such occurrence is solely attributable to a Force Majeure Event.
- (p) The levy of penalty is without prejudice to any other right or remedy that the Owner may have against the Contractor, whether under the Contract Documents or Applicable Law.

5.10 Manpower

- (a) The Contractor shall, at its cost, be solely responsible for deployment of all the required Manpower for performance of Services, as set out in the SCC/ Contract, throughout the term of the Contract. The Owner shall be entitled to levy Liquidated Damages if, any time during the term of the Contract, the strength of the Manpower deployed by the Contractor falls below the limit as specified in the SCC/ Contract. The methodology for calculating the Liquidated Damages are more particularly set out in the SCC/ Contract. Contractor agrees that Liquidated Damages for reduction in the strength of the Manpower, which is set out in the SCC/ Contract are reasonable estimate of damages which may be suffered by Owner and are intended to compensate the Owner for any damages or losses attributable to the reduction in the Manpower deployment at the Plant, and are not a penalty. Owner may, at its sole discretion, and without prejudice to its right to recover Liquidated Damages by any other method of recovery, deduct the amount of such Liquidated Damages from any monies due or which may become due to Contractor under the Contract Documents. The payment or recovery of Liquidated Damages shall not relieve Contractor from any of its other obligations and liabilities in law or under the Contract.
- (b) Nothing in this Contract shall imply that Owner has an obligation to, or has promised, either by conduct or otherwise, or is under any duty to supply any Manpower. Contractor shall be liable and responsible for compliance with all applicable laws concerning manpower deployed by contractor and Owner shall not be in any way liable or responsible for same. There is no relationship of employer-employee between Owner & Contractor and this Contract is on principal to principal basis as mentioned above.
- (c) If, in the sole judgment of Owner, any of Manpower or Subcontractor's personnel are incompetent, subversive of general discipline or regulations of Owner or commits any acts of misconduct, then Contractor shall upon receiving notice from Owner immediately withdraw such personnel from the Plant and not redeploy such personnel for the performance of any Services under this Contract. Contractor shall immediately thereafter deploy other suitable personnel in the place of the personnel so removed from the Plant.
- (d) Contractor agrees and represents that Manpower is not Owner's agents or employees for the purposes of any employment, tax or any other Applicable Laws, and as such Manpower is not entitled to any benefits that are available to employees of Owner. Contractor shall maintain complete control of Manpower required for performance of its obligations under this Contract and shall assume sole and full responsibility for their acts or omissions. Anything in this Contract which may appear to give the Owner the right to direct Contractor as to the details of the performance of the Service or to exercise a measure of control over Contractor shall mean that Contractor shall follow the desires of Owner only as to the intended results of the Service. Contractor shall ensure compliance with all applicable labor law. Accordingly, it is agreed that the payment to Contractor shall be subject to submission of proof of all payment under applicable labor laws. The payment shall be made in such milestones as laid down in the Contract.

5.11 Free Issue Material

- (a) Owner may furnish to Contractor Free Issue Materials, which shall be used for the purpose and in the manner specified under the Scope of Services. All Free Issue Materials furnished by Owner to Contractor shall be and continue to remain the property of Owner. Contractor shall be responsible for the safe delivery and storage and proper use and maintenance of such Free Issue Material at its own cost and expense. The Contractor agrees that the provisions of Clause 5.7 b) shall also apply to the Free Issue Materials.
- (b) The Contractor shall undertake quarterly (or at shorter intervals, if so requested by Owner), reconciliation of the Free Issue Material and submit a statement of their usage, consumption (in case of consumables) and maintenance in the form approved by Owner.
- (c) Responsibility Matrix for Free Issue Material (FIM) are as follows:

Sr No.	Activities (FIM)	Responsbile Entity
1	Identifying of FIM	Contractor
2	Loading & Transportation of FIM to Vendor works	Contractor
3	Unloading, Segregation, Fabrication, Reconciliation of Material at Vendor's work	Contractor
4	Dispatch of ready material to Owner's plant with Tag No and Identification Mark along with Packing list and Dispatch advise and MDCC by Owner.	Contractor
5	Issuance of MDCC	Owner
6	Unloading of Material, Storage and Stacking at Plant	Contractor
7	Reconciliation of Material	Contractor
8	Witness and Approval of Reconciliation of material	Owner
9	Commercial Reconciliation of Wastage, Salvage of Scrap, Burning loss	Owner

5.12 Co-operation with Plant Contractor

- (a) Contractor shall co-operate and work harmoniously with Owner and the Plant Contractors. Contractor shall facilitate access and use of the Plant [and Plant Facilities] by the Plant Contractors as necessary or required for the effective performance of their respective services in relation to the Plant.

5.13 Foreign Personnel

- (a) The Contractor shall submit to the Owner data on all foreign personnel he proposes to bring into India for the performance of the Services under the Contract, at least sixty (60) days prior to their arrival to India. Such data will include for each person the name, its present address, its assignment and responsibility in connection with the Scope of Services, and a short resume of its qualification, experience etc. in relation to the Services to be performed by him. The Contractor shall provide a copy of the passport of such foreign personnel to the Owner. Contractor authorizes Owner to use personal data of such foreign Personnel as furnished by Contractor for SOW and services and agrees to comply with applicable data protection laws of India.
- (b) Any person (as mentioned in above Clause 5.10.1) unsuitable and unacceptable to the Owner shall not be employed at the Plant. Any foreign personnel employed at the Plant, if found unsuitable or unacceptable by the Owner, shall be indicated by the Owner to the Contractor and the Contractor shall within a period of fifteen (15) days make alternate arrangements for providing a suitable replacement and repatriation of such unsuitable personnel at its own cost.
- (c) The cost of passports, visas and all other travel expenses to and from India, incurred by the

Contractor shall be to the Contractor's account. The Owner will not provide any residential accommodation and/or furniture to Manpower including foreign personnel and Contractor shall make its own arrangements for such facilities.

- (d) The Contractor and its foreign personnel shall respect and comply with all Indian acts, laws, rules and regulations and shall not in any way interfere with Indian political and religious affairs and shall conform to any other rules and regulations which the Government of India and the Owner may establish from time to time. The Contractor's foreign personnel shall work and live in close co-operation and co-ordination with their co-workers and the community and shall not engage themselves in any other employment either part-time or full-time nor shall they take part in any local politics or trade union activities.
- (e) The Owner on request of the Contractor may assist the Contractor, on best effort basis, in obtaining necessary permits to travel to India and back, by issue of necessary certificates and other information needed by the Governmental Authority.

5.14 Record Keeping and Inspection

- (a) Contractor shall maintain, all statutory records and such records and registers as may be required by the Owner from time to time and required for review and monitoring of the Contractor's work progress, performance of Scope of Services, and obligations under this Contract. Contractor shall also maintain record of all Instructions provided by the Owner to the Contractor's Representative. The Contractor shall provide all co-operations to the representatives appointed by the Owner for inspection of records and registers and for verifying whether the Services are provided in compliance with the Contract Documents and the Performance Parameters.

5.15 Contractor shall at its sole cost and expense defend, indemnify and hold harmless, the Owner against all Losses incurred claimed, levied or charged on the Owner Group, which arise in connection with or are in any way related to breach of any Applicable Laws, by the Contractor Group.

5.16 Encumbrance over Plant and Plant Facilities

- (a) The Contractor shall not, without a prior written permission of the Owner, alter, modify, remove or replace or create any Encumbrance over the Plant and Plant Facilities.

5.17 Contractor's Office at Site

- (a) The Contractor shall provide and maintain an office at the site for the accommodation of his agent and staff and such office shall be open at all reasonable hours to receive instructions, notices or other communications. However, it is agreed that permission by Owner to Contractor for site office does not give any rights to Contractor in the land or premises whatsoever for such site office and upon termination Contractor must handover vacant and peaceful possession back to Owner in the same condition as it was given to Contractor unless any other instructions are received from Owner. .

5.18 Other requirements:

- (a) Contractor shall not deploy any Manpower in Owner's premises not having an authorized entry pass/ photo identity card issued by Owner.
- (b) All Manpower be (biometrically enrolled, where ever applicable), verified against blacklisting database, medically checked and imparted safety training before issuance of entry pass.
- (c) Female labour shall work at site in accordance with the AIL guidelines & safety standards. All female labour shall abide by the guidelines about the dress code provided by the Owner and the same shall be binding on the Contractor .
- (d) The Contractor shall produce certificate of physical fitness of all its employees and shall employ only such persons as are found to be free of contagious diseases. Whenever in the opinion Owner, it is necessary for protection of the other employees or their families, the Contractor shall remove any of its employees found to be suffering from contagious disease, either to a hospital or

- permanently from the camp. Any contagious disease, when discovered shall be at once reported to the Owner.
- (e) The Contractor shall be fully responsible for any first aid and emergency medical treatment to its personnel and its Subcontractor's personnel. The Contractor shall make necessary arrangement for this purpose. Contractor shall also take applicable medical insurance for its workmen, worker etc. and insure accordingly.
 - (f) The Contractor shall ensure that antecedents of all the workers proposed to be deployed, is forwarded to the local police for verification. A copy of the police verification report shall be submitted to the Owner.
 - (g) Contractor's employees shall wear identification badge while on work at Plant. The Contractor shall provide all necessary Personnel Protective Equipment (PPE) to its workmen and staff. The Contractor and its workmen and staff shall strictly adhere to the rules & regulations prescribed by the Owner's Safety, Security & Administration Departments. In the event if there is non-compliance with the above mentioned rules Safety officer such levy such fines as it deem fit.
 - (h) In case the Owner becomes liable to pay any wages or dues to the labour or any Government agency under any of the provisions of the Minimum Wages Act, Workmen Compensation Act, Contract Labour Regulation Abolition Act or any other law due to act of omission of the Contractor, the Owner may make such payments and shall recover the same from the Contractor's Bills. Contractor shall submit a bank guarantee of such an amount as defined in Contract to ensure such compliance and in the event of non-compliance, such amount shall be deducted from bank guarantee.

6 OBLIGATIONS & RESPONSIBILITIES OF OWNER

- 6.1 Documentation: The Owner shall provide the Contractor with any Documentation that the Contract expressly states is to be provided by the Owner.
- 6.2 Reasonable Access: The Owner shall provide the Contractor with such reasonable access to the Project Site as will enable him to properly perform its obligations under this Contract. The Contractor shall not be entitled to exclusive access to and/or possession of the Site. The Contractor shall liaise and coordinate with the Owner and the other contractors employed by or on behalf of the Owner their respective rights of access to, and possession of, the Site.
- 6.3 Order Amendment: No additional work shall be executed without any change order. AIL shall not issue any post facto change order for regularization

7 CONTRACTOR'S REPRESENTATIONS

- 7.1 Duly Incorporated: It is a limited liability company duly organized, validly existing and in good standing under the Laws of India/ is company under laws of its incorporation and is qualified to do business in India and in all other jurisdictions in which the nature of the business conducted by it makes such qualification necessary and where failure so to qualify would have a material adverse effect on its financial condition, operations, prospects or business.
- 7.2 No Violation of Laws: It is not in violation of any applicable Laws or in the event of foreign company not in violation of its laws country of incorporation promulgated or judgment entered by any governmental authority which violations, individually or in the aggregate, would affect its performance of any obligations under this Agreement. There are no legal or arbitration proceedings or any proceeding by or before any governmental or regulatory authority or agency, now pending or (to the best knowledge of the Contractor) threatened against the Contractor which, if adversely determined, could reasonably be expected to have a material adverse effect on the financial condition, operations, prospects or business, as a whole, of the Contractor, or its ability to perform under this Agreement.

- 7.3 Approvals and Authorizations: It is the holder of all applicable governmental approvals, licenses, permits, or other authorizations required to permit it to operate or conduct its business now and as contemplated by this Agreement.
- 7.4 No Breach: None of the execution and delivery of this Contract, the consummation of the transactions herein contemplated or compliance with the terms and provisions hereof and thereof will conflict with or result in a breach of, or require any consent under, the charter or organizational documents of the Contractor, or any applicable Law or regulation, or any order, writ, injunction or decree of any court, or any agreement or instrument to which the Contractor is a party or by which it is bound or to which it is subject, or constitute a default under any such agreement or instrument.
- 7.5 Duly Authorized: It has all necessary power and authority to execute, deliver and perform its obligations under this Agreement; the execution, delivery and performance by the Contractor of this Agreement have been duly authorized by all necessary action on its part; and this Agreement has been duly and validly executed and delivered by the Contractor and constitutes the legal, valid and binding obligation of the Contractor enforceable against the Contractor in accordance with the terms thereof, except as such enforceability may be limited by bankruptcy, insolvency, reorganization or moratorium or other similar Laws relating to the enforcement of creditors' rights generally and by general equitable principles.
- 7.6 Contractor represents and warrants that:
- (a) Contractor has the requisite expertise, skill, knowledge, experience, Manpower and adequate infrastructure (with capacity and ability to augment all of these as may be necessary), and the requisite financial capabilities to successfully perform all Services in accordance with the terms of the Contract Documents;
 - (b) Neither Contractor nor any of its Affiliates or Subcontractors, and to the best of its knowledge, none of its or its Affiliates' or Subcontractors' respective employees, officers, directors, representatives, or agents, has made, offered to make or agreed to make any loan, gift, donation, commission, kick-back, bribe or other payment or facility, directly or indirectly, whether in cash or in kind, to or for (i) any governmental official, employee, representative or agent, (ii) any employee, officer, director, representative or agent of Owner or its Affiliates, or (iii) any other Person with respect to the negotiation, execution or performance of this Contract;
 - (c) The Services performed under and in accordance with the provisions of the Contract Documents will be free and clear of any and all claims, Encumbrances and rights of any Person;
 - (d) The Services will be performed as per Good Industry Practice by experienced and qualified Manpower and that the Services will be free from all Defects, conform to all the provisions of the Contract Documents and Applicable Laws and will be rendered in a manner that all key performance indicators such as the Performance Parameters (including but not limited to Plant Availability and Plant Reliability) are met.
 - (e) It is not subject to bankruptcy or insolvency proceedings or being voluntarily wound up, nor has any receiver been appointed on its assets
 - (f) It is not subject to any statutory/judicial/administrative investigations, inquiry or action other than in ordinary course of business
 - (g) It is not in breach or violation of any third party intellectual property rights or confidential information and services provided under contract to the Owner is its original work and creation.
 - (h) It is not subject to any litigations or disputes which will materially affect or prejudice the Contractors performance under this Agreement.
 - (i) It is not in breach or violation of applicable laws of India or export control regulations applicable to Contract
 - (j) It shall be fully liable and responsible for any workmen or sub-contractor appointed by it to perform Services and shall not hold Owner liable or responsible for any accident,incident,injury or harm caused to any of its manpower and have third party insurance
 - (k) It shall render services in accordance with the specification provided by AIL or according to all applicable laws and regulations.

8 OWNER'S REPRESENTATION

- 8.1 It is a corporation duly organized, validly existing, and in good standing under the laws of India; and
- 8.2 Execution, delivery and performance of the Contract by Owner and the consummation of the transactions contemplated thereby do not and will not (i) contravene Owner's certificate of incorporation, its constituent documents or by-laws; (ii) conflict with or result in a breach of or default under any license, indenture or agreement to which Owner is a party that would materially and adversely affect Owner's ability to perform its obligations under the Contract; or (iii) breach any Applicable Laws, judgment, decree, order or ruling of any court, Governmental Authority, regulatory body to which Owner is a party or by which any of its assets are bound.

9 STATUTORY AND OTHER OBLIGATIONS

- 9.1 Indemnity: In the performance of this Agreement and the carrying out of all Works, the Contractor shall, and shall cause its Subcontractors to, ascertain and comply with all applicable Laws, and the Contractor agrees to indemnify, defend and hold harmless the Owner and its directors and employees (collectively "Owner Indemnities") from and against any and all fines, penalties, related costs and expenses, including reasonable legal expenses and costs, attributable to (i) any failure of the Contractor or any Subcontractor to comply with such Laws in connection with the performance of the Works (ii) breach of any third party intellectual property rights; (iv) breach of any confidentiality obligation including breach of third party confidentiality obligations; and (v) breach of any other terms and condition of this GCC and/or Contract..

- 9.2 Change in Law: Subject to the terms of this Clause 9.1, any changes (including the enactment, modification or repealing of) to any Laws, from the Commencement Date of this Contract which directly affects the Project shall entitle the Contractor to make a Contractor's Variation in accordance with Clause "Change in the Law". For the avoidance of doubt, if, subsequent to the date of signature by the Contractor of the Form of Agreement:

1. the enactment of any new law;
2. the modification, repeal or re-enactment (other than a re-enactment which merely consolidates or codifies existing applicable law) of any existing Applicable Law;
3. the commencement of any applicable law which had not at the Effective Date yet entered into effect except to the extent such law was enacted prior to the Effective Date with a commencement after the Effective Date and such law takes effect on that commencement date without material amendment;
4. a change in the interpretation or application of any law by judicial or other authority (including a court, tribunal or any other Governmental Authority) having the authority to interpret or apply that law or any interpretation of any law by such authority which is contrary to the existing generally accepted interpretation thereof;
5. a loss of any clearance or permit (or an amendment to a clearance or permit); to the extent that such Change in Law has a material adverse effect on the Contract Price by an amount exceeding the value set out in the Contract provided that such event has not been caused due to the fault or negligence of the Contractor.

However, it is agreed that in the event of any Change in Law, Contractor shall bear the all incremental cost of Change in law including environmental law compliance, any tax duties etc.

10 CONTRACT PRICE, PAYMENT AND TAXES

- 10.1 Correctness & Sufficiency: The Contractor shall be deemed to have satisfied itself as to the correctness and sufficiency of the Contract Price. Subject to the provisions of the Contract, the Cost of executing the Works shall be at the risk of the Contractor, who shall be deemed to have obtained all information and taken account of all circumstances that may affect such cost before agreeing to the Contract Price. For the avoidance of doubt, the Contract Price covers all the Contractor's obligations under the Contract and

all things necessary for the proper completion of the design, execution, completion and maintenance of the Works and the remedying of any defects.

- 10.2 Notification of Mistake: The Contractor shall immediately upon discovery of any issue through written notification to the Owner of all inaccuracies, inconsistencies or ambiguities contained in the information provided by the Owner with respect to Scope or work, invoice, wrong amount of payment etc. . The Owner shall, within ten (10) days receipt of the written notification review the Contractor's request and if necessary issue appropriate written instructions to the Contractor to rectify the said inaccuracies, inconsistencies or ambiguities. Any cost and/or time impact resulting from the rectification shall be subject to the Owner's written approval before being paid by the Owner.
- 10.3 Correction of Mistake: Without prejudice to the foregoing, in the event that there is a mistake in the Contract Price due to a mistake or inaccuracy by the Contractor, the Owner shall be entitled to correct any such error, omission or mistake provided always that there will be no correction of Contract Price upwards if the Contractor understates the Contract Price; and that all costs of such correction shall be borne by the Contractor. In the event that there is a mistake in the Contract Price due to a mistake or inaccuracy by the Owner, the Owner is entitled to correct any such error or mistake at the Owner's own cost.
- 10.4 Payment Claims: The Contract price to be paid by or on behalf of the Company to the Contractor in full consideration for the performance by the Contractor of its obligations under this Contract. The Contract Price may be increased or decreased only as provided in Clause 20. However, the payment to Micro, small and Medium Enterprise Contractor has to made within 45 (forty-five) days of receipt of invoice or after correction of any mistake in invoice if such mistake is there.
- 10.5 The Contractor shall submit to the Owner, at monthly intervals (on the day of each month specified by the Owner following the month in which the Contract is made), a payment application ("Payment Claim") in such form as the Owner may from time to time prescribe. The Payment Claim shall be made in compliance with the requirements of the Act and shall show the amounts ("Claimed Amount") to which the Contractor considers himself to be entitled up to the last day of the monthly interval in question in respect of:
- (a) the value of the Works executed;
 - (b) any other items shown and separately priced in the Contract;
 - (c) the value of Supplies, Contractor's Equipment (but not Supplier's Equipment) delivered by the Contractor on the Project Site for incorporation in the Works but not incorporated in such Works.

The Contractor may submit such monthly statements up to the Owner's issue of the Interim Final Account. Within thirty (30) days of receiving an application for payment together with supporting documentation, the Company shall make payment of all undisputed amounts specified in such application. If the Company disputes any amounts claimed by the Contractor in any application, the Company may withhold payment of such disputed amounts and shall inform the Contractor of the reasons for such dispute. All payments to the Contractor shall be made in respective currency and shall be made to the account specified by the Contractor in writing, net of all statutory deductions as required by Applicable Laws. Mode of payment shall be NEFT for all domestic payments and through wire transfer for all import payments.

- 10.6 No payment in the event of material breach: Notwithstanding any other provision to the contrary in this Contract, the Company shall have no obligation to make any payment to the Contractor at any time when the Contractor is and remains in material breach of this Contract (as determined by the Company),

- and the Company may withhold all or part of any payment due to the Contractor under this Contract as far as the Company may, in its sole discretion, deem necessary to ensure the performance of the Works or to protect the Company's rights hereunder.
- 10.7 Payment or Use not Acceptance: No payment to the Contractor hereunder or any use of the Works by the Company shall constitute an acceptance of the Works or relieve the Contractor of any of its obligations hereunder.
- 10.8 Set-off: The Company may, but shall not be under any obligation, at any time to set off any and all sums due by the Contractor against any sums due to the Company.
- 10.9 Responsibility for Taxes: Contractor acknowledges that Contractor will be responsible for administering and paying, all Taxes (as hereinafter defined) applicable to the carrying out of the Works including all the incremental taxes. For the purposes of this Contract, "Tax" or "Taxes" mean taxes, duties, levies, charges and contributions, including:
- a) works contract, GST, octroi, storage, consumption and use taxes; license, permit, registration fees, and stamp duty; and income, profit, excess profit, franchise and personal property taxes;
 - b) employment taxes and contributions imposed by law or trade union or regulations with respect to or measured by the compensation (wages, salaries or other) paid to employees of the Contractor or any member of the Contractor group, including taxes and contribution for unemployment compensation insurance, medical and health insurance, provident fund and other welfare funds, pensions, annuities and disability insurance;
 - c) fines, interest and penalties in connection with the foregoing
- 10.10 Service Tax: The Contract Price excludes Service Tax. The Company shall reimburse the Contractor for any Service Tax / GST payable by the Contractor in connection with this Contract. Such reimbursement shall be made within thirty (30) days following the Company's receipt of Contractor's invoice.
- 10.11 Indemnity: The Contractor shall indemnify the Company from and against any and all damages arising as a result of Contractor's failure to comply with its obligations under this clause 10.
- 10.12 Withholding Tax: As per prevailing government rules shall be applicable and will be deducted and certificate for the same shall be issued
- 10.13 Tax clearances: The Contractor shall be responsible for obtaining all Permits relating to Taxes from the Government Authorities in India required for remittances of payment under this Contract (including with respect to the withholding tax order to be obtained from the tax authorities in India); the Contractor may request the Company to provide assistance with respect to such Permits provided that the Contractor shall have provided the Company with the following documentation promptly following the execution and delivery of this Contract:
- (a) certificate of incorporation from the Contractor's place of incorporation;
 - (b) tax residency certificate issued by the inland revenue/income tax authorities of the Contractor's place of incorporation;
 - (c) certificate indicating "no permanent establishment (PE) in India" (issued by the Contractor on its letterhead); and
 - (d) authorization letter to the Company allowing it to make an application to the Income Tax Department in India seeking tax clearance for remittance of fees to the Contractor under this Contract (issued by the Contractor on its letterhead).
- 10.14 Notwithstanding anything in this Contract to the contrary, the Company shall not be considered to be in breach or default hereunder in the event any payment to the Contractor is delayed as a result of a failure to obtain the proper Permits relating to Tax from the relevant Government Authorities in India.

10.15 Customs: The Contractor shall be responsible for all Custom formalities for importing and exporting of all Works and resources and all other items incorporated into the Works or used in performing the Works. In no event will any items be imported or exported using the Company's import/export code (IEC).

The Contractor shall pay all customs duties levied on the Works & Resources and maintain a record of all such costs which shall be reimbursed by the Company to the Contractor. The Contractor shall maintain complete and accurate files with respect to all customs and duties matters arising out of the Performance of this Contract.

The Contractor shall be responsible for and shall Indemnify the Company Group from and against the reporting, filing and payment of any Taxes (wherever arising) including Taxes on income, profit or turnover, duties, charges or fees imposed directly or indirectly on the Contractor or any member of the Contractor Group as a result of the Contractor's performance of this Contract. Any fines, interest, penalties or other costs incurred by the Contractor or its Affiliates, agents, employees or Subcontractors with respect to any non-compliance by the Contractor, its Affiliates, agents, employees or Subcontractors with the requirement of any Applicable Laws relating to Taxes as provided for in this Clause 7 shall be the sole responsibility, and for the sole account of, the Contractor who shall Indemnify the Company from and against any and all Damages imposed on the Contractor arising there from.

11 LIENS

11.1 If, at any time, there should be evidence or any lien or claim for which the Owner might have become liable and which is chargeable to the Contractor, the Owner shall have the right to retain out of any payment then due or thereafter to become due an amount sufficient to completely indemnify the Owner against such lien or claim and if such lien or claim be valid the Owner may pay and discharge the same and deduct the amount so paid from any money which may be or may become due and payable to the Contractor. If any lien or claim remain unsettled after all payments are made, the Contractor shall refund or pay to the Owner all moneys that the latter may be compelled to pay in discharging such lien or claim including all costs and reasonable expenses. Further, Owner shall also have the right to retain any amount payable to Contractor, in the event Contractor fails to pay any statutory dues and shall not release such payment unless proof of such payment has been submitted.

12 PATENT AND OTHER PROTECTED RIGHTS

12.1 Indemnity for Infringement:

- (a) Contractor hereby represents and warrants that it is not in breach or violation of any third party intellectual property rights and that it is the registered owner of all Intellectual Property Rights, with an unrestricted legal right and authority to exercise any or all of the said Intellectual Property Rights, required for performing its obligations under the Contract Documents.
- (b) Contractor hereby represents and warrants that to the extent Intellectual Property Rights of any Person are used or incorporated or proposed to be used in performance of its obligations under the Contract Documents, Contractor has obtained the necessary license, authorization or consent from such Person for use of such Intellectual Property Rights as necessary to perform Contractor's obligations under Contract.
- (c) Contractor hereby grants perpetual and irrevocable license and permission to Owner, royalty free, to use the Intellectual Property Rights for the purpose of this Contract.
- (d) Contractor shall, at its sole cost and expense, defend, indemnify and hold harmless Owner, its Affiliates, and their respective directors, officers, agents, representatives and employees from and against all Losses incurred which arise from, arise in connection with or are in any way related to any claim by any third party that the performance of Service by Contractor infringes or misappropriates any third party's Intellectual Property Rights.

- (e) In the event Owner notifies Contractor of any such claim or proceeding initiated by a third party, Contractor shall assume control of such claim or proceeding through its own counsel. Contractor shall not compromise or settle any such claim or proceeding or admit any liability or wrongdoing by Owner without the express prior written consent of Owner.
- (f) If performance of any Service is held to constitute an infringement or misappropriation of any Person's Intellectual Property Rights, Contractor shall in addition to its indemnification obligations under this Clause 12.1, at its sole cost and expense use best efforts to: (a) procure the right for Contractor to continue the performance of Service or any part thereof without any interruption or payment of any amount by Owner; (b) re-perform the Service or any part thereof such that such Service or any part thereof that is made good ceases to infringe upon Intellectual Property Rights of such Person; and (c) where any Service or any part thereof is made good, ensure that such Service that is made good is consistent with the Scope of Service and meets the Performance Parameters.
- (g) If Contractor fails or refuses to fulfil its obligations set forth in this Clause 12.1, Owner shall not be required to pay any additional amounts in connection with the performance of Service or any part thereof, and Contractor shall:
- promptly refund to Owner all compensation paid to Contractor with respect to such infringing Service or any part thereof; and
 - bear and pay any additional cost incurred by Owner in procuring the right and license to use the Intellectual Property Rights forming part of the infringing Service or have such Service re-performed so as to make it non-infringing.
- 12.2 Notification of Claim or Breach: In the event of any claim being made or proceedings instituted against the Owner which the above indemnity applies, the Owner shall promptly notify the Contractor thereof and the Contractor shall at the request of the Owner deal with such claim or conduct such proceedings on behalf of the Owner and at its own expense. In the event that the Owner decides to deal with any such proceedings on its own behalf, it shall not make any admission prejudicial to the Contractor.
- 12.3 Warranty: The Owner warrants that any design, drawings, specification or instructions furnished directly by the Owner shall not be such as will cause the Contractor to infringe any letters patents, registered design, trade mark, design right or copyright in the performance of the Contract, and agrees to indemnify the Contractor against all liabilities, claims, costs and expenses that may result from such infringement. Any additions/ modification/ improvement to the Contractor's design or drawing or specification by Owner shall be intellectual property of Owner and Owner shall be free to use it at its own discretion and suitably protect through patents and Contractor shall help owner in obtaining such protection.
- 12.4 It is further agreed that Owner shall be free to use such Intellectual Property rights without payment of any royalty etc. in future as deem fit by Owner.

13 ASSIGNMENT

- 13.1 Assignment by Owner: Owner shall be entitled to novate, assign, or otherwise dispose of its rights, obligations or interest under this Contract (including creation of any Encumbrance in favour of its lenders) in whole or in part to any Person without requiring any consent from the Contractor. Contractor shall do all acts and execute such documents as may be required by the Owner to affect such assignment in favour of third parties
- 13.2 Assignment by Contractor: Contractor shall not assign, novate or otherwise transfer (including by change of ownership or control) its rights and obligations under this Contract in whole or in part without the prior written consent of Owner. Any assignment or transfer of Contractor's rights and obligations under the Contract Documents (including creation of any Encumbrance in favour of Contractor's lenders) in any manner without the prior written consent of Owner shall be void *ab initio*.

- 13.3 Subcontracting: The Contractor may only appoint a sub-contractor only post written approval received from Owner for the supply of or execution such part of the Works in accordance with the procedure prescribed by the Owner. Irrespective of such approval by Owner, Contractor shall be completely liable for subcontractor at all time and Owner shall not be liable in any event whatsoever.
- 13.4 Approval of Owner: The Contractor shall obtain the Owner's approval as to the extent to which the Works may be subcontracted and with respect to any such Subcontracts shall follow the Owner's prescribed selection procedure.

14 CONTRACTOR'S CLAIMS

- 14.1 Notification of Claim for Extension or Additional Price: If the Contractor considers that it is entitled to any extension of the Time for Completion and/or any additional payment, under any Clause of these Conditions or otherwise in connection with the Contract, the Contractor shall give notice to the Owner, describing the event or circumstance giving rise to the claim and citing the relevant provision(s) of the Contract on which its claim is based. The notice shall be given as soon as practicable, and in any event not later than seven (7) days after the Contractor became aware, or should have become aware, of the event or circumstance. However, any such extension cannot be for more than [.] days and for any such delay beyond prescribed time period, Contractor shall be liable to pay liquidated damages as mentioned in the GCC or in the Contract.
- 14.2 Failure to Give Notice: If the Contractor fails to give notice of a claim within such period of seven (7) days, the Time for Completion shall not be extended, the Contractor shall not be entitled to additional payment, and the Owner shall be discharged from all liability in connection with the claim. Otherwise, the following provisions of this Clause 14.1 shall apply.
- 14.3 Other Notification: The Contractor shall also submit any other notices which are required by the Contract, and supporting particulars for the claim, all as relevant to such event or circumstance.
- 14.4 Keeping of Records: The Contractor shall keep such contemporary records as may be necessary to substantiate any claim, either on the Project Site or at another location acceptable to the Owner. Without admitting liability, the Owner may, after receiving any notice under this Clause, monitor the record keeping and/or instruct the Contractor to keep further contemporary records. The Contractor shall permit the Owner to inspect all these records, and shall (if instructed) submit copies to the Owner.
- 14.5 Details of Claim: Within twenty-one (21) days after the Contractor became aware (or should have become aware) of the event or circumstance giving rise to the claim, or within such other period as may be proposed by the Contractor and approved by the Owner, the Contractor shall send to the Owner a fully detailed claim which includes full supporting particulars of the basis of the claim and of the extension of time and/or additional payment claimed. If the event or circumstance giving rise to the claim has a continuing effect:
- (a) this fully detailed claim shall be considered as interim;
 - (b) the Contractor shall send further interim claims at monthly intervals, giving the accumulated delay and/or amount claimed, and such further particulars as the Owner may reasonably require; and
 - (c) the Contractor shall send a final claim within 21 days after the end of the effects resulting from the event or circumstance, or within such other period as may be proposed by the Contractor and approved by the Owner.
- 14.6 Owner's Response: The Owner shall respond thereafter with approval, or with disapproval and detailed comments at Owner's discretion. The Owner may also request any necessary further particulars.
- 14.7 Owner's Decision: The Owner shall proceed to make a fair determination in accordance with the Contract, taking due regard of all relevant circumstances to determine (i) the extension (if any) of the

Time for Completion (before or after its expiry) and/or (ii) the additional payment (if any) to which the Contractor is entitled under the Contract. The Owner shall give notice to the Contractor of its determination, with supporting particulars.

Notwithstanding the foregoing, the Company shall not be obliged to grant any increase in the Contract Price in accordance with this Clause 14 if:

- (a) the Contractor fails to give notice to the Company in accordance with Clause 14.2; or
- (b) the Contractor fails to provide the Company with detailed particulars of its claim in accordance with Clause 14.5; or
- (c) the Contractor fails to demonstrate that the event or circumstance has had an adverse effect on the Contractor's costs of performing its obligations in accordance with this Contract or that it has used its reasonable endeavors to minimize the impact of such delay and proceed with the Works as required; or
- (d) any increase in costs is attributable to any default, omission, neglect or failure on the Contractor's part or any other member of the Contractor Group or any event or circumstances which are in the control of the Contractor or any other member of the Contractor Group; or
- (e) with respect to any Change Order, if the increase in the Contract Price (if any) has been agreed and expressly included in such Change Order.

For the further avoidance of doubt, any extension of time pursuant to Clause 14 shall not, in itself, entitle the Contractor to make any claim for an increase in the Contract Price pursuant to Clause 14.

- 14.8 **Other Considerations:** The requirements of this Clause 14.8 are in addition to those of any other Clause which may apply to a claim. If the Contractor fails to comply with this or another Clause in relation to any claim, any extension of time and/or additional payment shall take account of the extent (if any) to which the failure has prevented or prejudiced proper investigation of the claim, unless the claim is excluded under Clause 14.1.

15 SCRAP & EXCESS MATERIALS

- 15.1 On completion of the work, the Contractor shall submit the "Materials Appropriation Statement" for all the issued materials issued by the Owner as Free Issue Materials (F.I.M.).
- 15.2 Every month, the Contractor shall submit an account for all the materials issued by the Owner in the Proforma furnished by Engineer-In-Charge.
- 15.3 All steel and other materials shall be issued in available length/size and no claim for extra payment on account of issue of nonstandard lengths/sizes will be entertained.
- 15.4 Following scrap allowances by weight are permissible. The percentage allowances shall be accounted for on the basis of erection weights/approved fabrication drawings worked out on theoretical basis as mentioned below:

	Max Salvageable	Max Unaccountable by weight/ Burning losses as applicable
Pipes	5%	2.50%
Plates	5%	2.50%
Structurals	5%	2.50%
Reinforcement Steels	5%	NIL
Cement	NIL	3%

- 15.5 All the materials issued by Owner shall be accounted for size wise category wise.

(a) Any unused/serviceable/salvageable quantity of material not returned and wastage beyond specified limits shall be charged at penal rates to be determined by the Owner/CONSULTANT.

15.6 The penal rate be worked out on the following basis

- (a) Landed cost
- (b) Handling charges
- (c) Storage charges
- (d) Loss of interest
- (e) Overheads

the Scrap disposal shall be in accordance with the guidelines of Owner and in the event there is a salvage value of such excess or scrap material, Owner shall deduct such value from the amount payable to Contractor and in the event there is no such amount payable to Contractor, Contractor shall reimburse such amount equivalent to salvage value of scrap.

16 COMPANY'S INSTRUCTIONS

16.1 Company's Instructions: The Owner may at any time give instructions to the Contractor (which instructions shall be in accordance with the provisions of the Contract). The Contractor shall proceed with all such instructions within such period as the Owner may prescribe, and in the absence of such prescribed period, within a reasonable period or within such period as may be agreed between the Owner and the Contractor.

16.2 Response to Company's Instructions: If the Contractor is of the opinion that compliance with an instruction of the Company would:

- (a) constitute a change in the type or extent of the Works or services to be supplied by the Contractor under the Contract; or
- (b) delay completion of the Works; or

prevent the Contractor from fulfilling its obligations under the Contract, the Contractor should so inform the Owner in writing within seven (7) days. The Owner, if he is in agreement with the Contractor's opinion, shall then withdraw or amend and re-issue the instruction or, if he wishes, substitute such instruction with a Variation Order under the provisions of Clause 27. If the Owner fails to withdraw, amend and re-issue the instruction, or substitute such instruction with a Variation Order within fourteen (14) days, the Contractor shall so inform the Owner of the same.

16.3 Obligation to Proceed: Unless the Owner instructs otherwise within a further seven (7) days, the Contractor shall proceed with the Owner's instruction and shall, subject to Clause 27, be entitled to such extension of time and/or additional payment as may be reasonable in the circumstances,

17 WORK IN MONSOON AND DEWATERING

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

17.2 During monsoon and other period, it shall be the responsibility of the Contractor to ensure safety precautions at the site and to keep the construction work site free from water at his own cost.

18 HOUSEKEEPING AND WORK ON SUNDAYS AND HOLIDAYS

- 18.1 The Contractor shall at all times keep his work spots, site office and surroundings clean and tidy, free from dust, rubbish, scrap, surplus material and unwanted tools and equipment. All scaffolding and temporary structures shall be removed as soon as the job for which these are intended is complete. The welding and other electrical cables shall be routed to allow safe traffic by all concerned. All equipment and material to be taken inside the plant building shall be cleaned thoroughly before taking them inside. The erected equipment and piping shall also be kept clean by regular cleaning or by following protective methods. The Contractor shall provide adequate staff for above purpose. The Owner envisages the requirement of around four persons in field as a minimum for this work. In addition, as the work will be parallel with civil works, some amount of dewatering/mopping is also envisaged. Owner has right to stop work if the Contractor fails to improve upon the house keeping after having been notified.
- 18.2 For carrying out work on Sundays, and holidays, the Contractor will take the prior written approval of the Engineer-in-Charge or his representative.

19 CONTRACTOR'S STAFF

- 19.1 Contractor's Representative: The Contractor shall furnish the name of its Representative to the Owner. If the Contractor's Representative is not named in the Contract, the Contractor shall prior to the commencement of work under the Contract appoint a suitable manager who shall have full authority to act on the Contractor's behalf in connection with the Contract ("**Contractor's Representative**"). The Contractor shall notify the Owner of the name of the person so appointed and of its normal place of work. If the Contractor's Representative is named in the Contract, the Contractor shall not change such appointment without the prior consent of the Owner. The Contractor shall at all times until he has fully performed its obligations under Clause of Liability for Defects ensure that a suitable person is appointed.
- 19.2 Construction Manager: From the commencement of Works at the Project Site until the whole of the Plant has been accepted by the Owner, the Contractor's Representative shall ensure that some suitable person who is conversant in English is employed by the Contractor at the Project Site as construction manager ("**Construction Manager**"). The Construction Manager or its deputy shall supervise all work done at the Project Site by the Contractor and shall receive on behalf of the Contractor all instructions given by the Owner to the Contractor at the Project Site. The Construction Manager shall not be employed by the Contractor to do work under contracts with any other third party without the prior written agreement of the Owner. The Contractor shall notify the Owner of the person appointed as Construction Manager and shall not make or change such appointment without the previous consent of the Owner.
- 19.3 Supervisory Staff: The Contractor shall provide such further supervisory staff at the Project Site as are specified in the Contract including without limitation the list of personnel. Without prejudice to the foregoing the Contractor shall ensure that there are at all times at the Project Site sufficient suitably qualified and experienced staff to supervise all work being done by the Contractor at the Project Site and where required by the Contract to advise and assist the Owner in the start-up of the Plant, the carrying out of the performance tests, and the operation of the Plant until the Final Acceptance.
- 19.4 Retention of Key Positions: The Contractor shall use best endeavors to ensure that any key positions named in the Contract shall continue to be employed in their specified capacities on the Works for so long as and to the extent that the Works requires. Resumes of key personnel nominated in the organization charts shall be included, highlighting relevant experience on similar projects. All proposed candidates must be available for interview as part of the technical bid evaluation. Nominees determined as acceptable by Company cannot be substituted without the prior written approval of Company. Any violation to the same will attract a penalty of INR 10,000/- per person.

- 19.5 Change of Personnel by Owner: If the Owner is of the opinion that the Contractor's Representative, Construction Manager or any member of the Contractor's supervisory staff is incompetent, unsuitable or has been guilty of misconduct or serious breach of its duties he may by notice to the Contractor require such person to leave the Project Site and to be replaced with immediate effect. The Contractor shall be under an obligation to act on the Owner's notice forthwith or as soon as reasonably practical. The decision by the Owner to exercise its power to give such notice, which is a matter for its absolute discretion, shall be final and binding and not subject to challenge in arbitration or court proceedings. The Owner shall not delegate the power to give such notice to the Owner's Representative. The Owner shall have any obligation to reimburse the Contractor the costs of replacing the Construction Manager or any member of the Contractor's site supervisory staff who is the subject of such notice by the Owner.
- 19.6 Adequate Manpower: The Contractor shall employ adequate numbers of suitably qualified, careful, efficient, competent, skilled and professional staff to carry out the Works.
- 19.7 Qualification of Manpower: The Contractor shall ensure that any and all personnel involved in the Project are technically qualified, competent, trustworthy, skilful, professional and experienced in the duties to be performed, and any replacements shall be made from the Contractor's permanent staff. Agency staff shall only be used as replacement Key Personnel with the express written consent of the Owner. The Contractor shall ensure that Key Personnel will be available for meetings with the Owner at site/project office provided that at least twenty-four (24) hours' notice is given.

20 GENERAL CONDITIONS FOR CONSTRUCTION AND ERECTION WORK

- 20.1 The working time at works site is 48 hours per week. Overtime work is permitted in cases of need and the Owner will not compensate the same and it shall be liability of the Contractor to pay such overtime pages in accordance with the applicable laws. Shift working at 2 or 3 shifts per day will become necessary and the Contractor should take this aspect into consideration for formulating his rates for Tender. No extra claims shall be entertained by the Owner on this account.
- 20.2 The Contractor must arrange for the placement of workers/ equipment in such a way that the delayed completion of the work or any part thereof for any reason whatsoever will not affect their proper employment. The Owner shall not entertain any claim for idle time payment whatsoever.

21 TIME FOR COMPLETION & PROGRESS SCHEDULE

- 21.1 Time For Completion: The Contractor shall complete the whole of the Works within the Time for Completion for the Works including:
- (a) completing all work and Performance Tests which is stated in the Contract as being required for the Works; and
 - (b) obtaining the Temporary Occupation Permit (TOP) for the Works.
- 21.2 Progress Schedule: The Contractor shall adhere to the Progress Schedule set out in Contract. In the event that the Contractor falls behind the Progress Schedule, Owner decides that the rate of progress by the Contractor in carrying out the Works is likely to prejudice the Contractor's ability to complete the construction of the Plant or any specified Section thereof (as the case may be) in accordance with the provisions of Clause 13.1, and that is other than a result of a cause listed in Clause 14, the Owner may instruct the Contractor to submit, a revised programme and supporting report describing the revised methods which the Contractor proposes to adopt in order to expedite progress and complete within the Time for Completion. Following such notice, the Contractor shall remedy the potential delay at its own cost. Unless the Owner notifies otherwise, the Contractor shall adopt these revised methods, which may require increases in the working hours and/or in the numbers of the Contractor's employees, at the risk

and cost of the Contractor. If these revised methods cause the Owner to incur additional Costs, the Contractor shall pay these Costs to the Owner, in addition to liquidated damages (if any) under Clause 13.3 below.

- 21.3 No Limitation on Liability: The exercise by the Owner of its powers under this Clause shall in no way relieve the Contractor of its liability to pay damages for delayed completion.

22 EXTENSION OF TIME & LIQUIDATED DAMAGES

- 22.1 Extension on Time: The Contractor shall be entitled, subject to Clause 21, to an extension of the Time for Completion if and to the extent that completion for the purposes of Clause of Force Majeure is or will be delayed by any of the following causes:

- (a) a Variation;
- (b) a cause of delay giving an entitlement to extension of time under a Clause of these Conditions; or
- (c) any delay, impediment or prevention, caused by or attributable to the Owner or any failure by the Owner to fulfil its obligations under this Contract.

Provided always that the Contractor shall not be entitled to any extension of time where the instructions or acts of the Owner are necessitated by or intended to remedy any default, negligence or breach by the Contractor.

- 22.2 Liquidated Damages for Delay: If the Contractor fails to comply with Clause 13.1, the Contractor shall pay Liquidated Damages for Delay to the Owner for such failure. The Liquidated Damages for Delay shall be the sum stated in the Special Conditions, which shall be paid for every day which shall elapse between the relevant Time for Completion and the date stated in the Certificate of Substantial Completion. However, the total amount due under this Clause shall not exceed the maximum amount of Liquidated Damages for Delay (if any) stated in the Special Conditions. For the avoidance of doubt, if the Special Conditions do not state that the Liquidated Damages for Delay payable by the Contractor shall be subject to any maximum amount, then the Contractor's liability under the Clause shall not be subject to any such limitation. For the avoidance of doubt, these damages shall not relieve the Contractor from its obligation to complete the Works, or from any other duties, obligations or responsibilities which it may have under the Contract.

- 22.3 Payment of Liquidated Damages: The liquidated damages referred to in Clause 22.2 shall be paid by the Contractor to the Owner within seven (7) days of the Contractor's receipt of a written notice from the Owner demanding payment. In the event Contractor fails to pay such Liquidated damages, AIL shall be free to deduct such payment from the amounts payable to Contractor.

- 22.4 Other Remedies: The payment of liquidated damages under this Clause 22.3 or otherwise provided for in this Contract shall not prejudice the rights of the Owner under law or equity, including without limitation, recovery of damages or application for any equitable relief or remedies available.

23 FORCE MAJEURE AND DELAYS

- 23.1 Definition: 'Force Majeure' shall mean, to the extent that the occurrence and effect of which could not have been prevented or avoided by the Party affected thereby notwithstanding the exercise by that Party of reasonable foresight, diligence and care, the exceptional events or circumstances which prevent or impede the due performance of the Contract as listed below: -

- (a) war or hostilities;
- (b) riot or civil commotion by persons other than the Contractor's employees and those of its Subcontractors;

- (c) earthquake, flood, fire or other natural physical disaster.
- (d) shipwreck and perils of navigation;
- (e) nationwide strikes (excluding employee strikes, lockouts or other industrial disputes or action solely among employees of Contractor), blockade, embargo, quarantine, public disorder, sabotage or similar events beyond the control of the Affected Party;
- (f) ionizing radiation or radio-active contamination from any nuclear fuel waste or nuclear facility, assembly or component or nuclear accident or explosion;
- (g) pandemic, epidemic, terrorist, wars, quarantine etc.

For avoidance of doubt, the mere shortage of labour, materials or utilities shall not constitute Force Majeure unless caused by circumstances that are in themselves Force Majeure. The Contractor acknowledges and accepts that: Site is typically subject to strong winds and heavy rainfall periodically throughout the year (including rains and winds associated with the monsoon seasons). The Contractor shall be required to execute and proceed with the Works throughout such periods which shall not constitute Force Majeure for the purposes of this Clause 23;

On occurrence of Force Majeure, affected Party shall give written notice to other party immediately and such affected Party shall be relieved from performance of obligations and same shall stand suspended temporarily until Force Majeure ceases to exist. The occurrence of Force Majeure shall not impair earlier obligations before such notice date.

23.2 Business Continuity Plan: The Contractor shall within [30 days] of the Commencement Date submit to the Owner a business continuity plan ("**Business Continuity Plan**") which shall include contingency plans to minimize the impact of any potential Force Majeure. The Owner shall review the Business Continuity Plan and shall be entitled to discuss any changes to the Business Continuity Plan and the Contractor shall incorporate and amend the Business Continuity Plan with such reasonable changes as is agreed by Parties.

23.3 Implementation of Business Continuity Plan & Notification:

- (a) If the Contractor shall be prevented or delayed from or in performing any of its obligations under the Contract by any of the matters specified at Clause 23.1, he shall forthwith give notice thereof to the Owner and in any event within seven (7) days after he became aware, or should have become aware, of the relevant matter constituting Force Majeure. If applicable, the Contractor shall put into effect the approved Business Continuity Plan to mitigate the impact of such delays resulting from the Force Majeure. As soon as reasonably possible thereafter, the Contractor shall give further notice of the Business Continuity Plan plans undertaken (if any), and the extension of any date or period specified in the Contract for completion of such obligations which it considers would be fair and reasonable in the circumstances.
- (b) If the Owner shall be prevented or delayed from or in performing any of its obligations under the Contract by any of the matters specified at Clause 23.1, he shall forthwith give notice thereof to the Contractor and in any event within seven (7) days after he became aware, or should have become aware, of the relevant matter constituting Force Majeure.
- (c) Party shall give notice to the other Party when it ceases to be affected by the Force Majeure. The Owner shall, after the extent and consequence of any such delay may be ascertained, grant an appropriate extension to the Progress Schedule and to the Time for Completion

23.4 Extension of Time: If the Contractor is prevented from performing any of its obligations under the Contract by Force Majeure of which notice has been given under Clause 23.4, and suffers delay and/or incurs Cost by reason of such Force Majeure, the Contractor shall be entitled, and 23.3, to request an extension of time for any such delay, if completion is or will be delayed. In such event, the Owner and the Contractor shall bear their own costs arising out of or in connection with the Force Majeure.

23.5 No Extension of Time. The Contractor shall not be entitled to any extension of time or any recovery of

Cost resulting from a Force Majeure if such delay or Cost incurred could be reasonably avoided if the Contractor implemented the Business Continuity Plan with reasonable effort. For the avoidance of doubt, failure by the Contractor to give the requisite notice under Clause 23.3 shall preclude him from claiming at any stage an extension of time on account of that event.

- 23.6 Termination of Contract: If in the opinion of the Owner, performance of the Works is substantially prevented for a continuous period of 90 (Ninety) days by virtue of any event falling within the provisions of Clause 23.1, then either Party may terminate the Contract by written notice to the other. In the event of such a termination the rights and obligations of the Parties shall be the same as if the Contract had been terminated by the Owner under Clause Termination by the Owner.
- 23.7 Reasonable Efforts to Minimize Delay: The Contractor shall at all times use reasonable endeavors to minimize any delay in the performance of its obligations under the Contract whatever may be the cause of such delay.

24 POWER OF ENTRY

- 24.1 If the Contractor does not commence the work in the manner previously described in the Contract or if he shall at any time in the opinion of the Engineer-in-Charge.
- (a) Fail to carry out the works in conformity with the contract documents, or
 - (b) Fail to carry out the works in accordance with the time schedule, or
 - (c) Substantially suspend work or the works for a period of seven days without prior written consent from the Engineer-in-Charge, or
 - (d) Fail to carry out and execute the works in accordance with the Contract and to the satisfaction of the Engineer-in-Charge, or
 - (e) Fail to supply sufficient or suitable constructional plant, temporary works, labour, materials or things, or
 - (f) Commit or suffer, or permit any other breach of any of the provisions of the contract on his part to be performed or observed or persist in any of the above mentioned breaches of the contract for seven days, after notice in writing shall have been given to the Contractor by the Engineer-in-Charge requiring such breach to be remedied, or
 - (g) If the Contractor shall abandon the works, or
 - (h) If the Contractor during the continuance of the Contract shall become bankrupt, make any arrangement or composition with his creditors, or permit any execution to be levied or go into liquidation whether compulsory or voluntary not being merely a voluntary liquidation for the purpose of amalgamation or reconstruction

Then in any such case,

The Owner shall have the power to enter upon the works and take possession thereof, and to revoke the Contractor's licence to use the same, and to complete the works by his agents, other Contractors or workmen, without making payment or allowance to the Contractor for the said materials other than such as may be certified in writing by the Engineer-in-Charge to be reasonable, and if the Owner shall by reason of his taking possession of the works or of the works being completed by other contractor (due account being taken of any such extra work or works or works which may be omitted) then the amount of such excess as certified by the Engineer-in-Charge shall be deducted from any money which may be due for work done by the Contractor under the contract and not paid for. Any deficiency shall forthwith be made good and paid to the Owner by the Contractor.

25 SETTING OUT WORKS

- 25.1 The Engineer-in-Charge shall furnish the Contractor with only the four corners of the work site and a level bench mark and the Contractor shall set out the works and shall provide an efficient staff for the purpose and shall be solely responsible for the accuracy of such setting out.
- 25.2 The Contractor shall provide, fix and be responsible for the maintenance of all stakes, templates, level marks, profiles and other similar things and shall take all necessary precautions to prevent their removal or disturbance and shall be responsible for the consequence of such removal or disturbance should the same take place and for their efficient and timely reinstatement. The Contractor shall also be responsible for the maintenance of all existing survey marks, boundary marks, distance marks and centre line marks, either existing or supplied and fixed by the Contractor. The works shall be set out to the satisfaction of the Engineer-in-Charge. The approval thereof or joining with the Contractor by the Engineer-in-Charge in setting out the work, shall not relieve the Contractor of any of his responsibilities.
- 25.3 Before beginning the works, the Contractor shall at his own cost, provide all necessary reference and level posts, pegs, bamboos, flags, ranging rods, strings and other materials for proper layout of the work in accordance with the scheme for bearing marks acceptable to the Engineer-in-Charge. The centre, longitudinal or face lines and cross lines shall be marked by means of small masonry pillars. Each pillar shall have distinct mark at the centre to enable theodolite to be set over it. No work shall be started until all these points are checked and approved by the Engineer-in-Charge in writing but such approval shall not relieve the Contractor of any of his responsibilities. The Contractor shall also provide all labour, material and other facilities, as necessary, for the proper checking of layout and inspection of the points during construction.
- 25.4 Pillars bearing geodetic marks located at the sites of units of works under construction should be protected and fenced by the Contractor.
- 25.5 On completion of works, the Contractor must submit the geodetic documents according to which the work was carried out.

26 COORDINATION

- 26.1 Contractor's Responsibility for Co-ordination: The Contractor shall be responsible for the coordination and proper execution of the Works, including the safety of all Subcontractors and the coordination of its Works with those of the other contractors employed by or on behalf of the Owner. The Contractor shall also be responsible for working and coordinating with the Supplier on all relevant matters in relation to the Project, including without limitation, the Progress Schedule, delivery of Supplier's Equipment, installation procedures, Performance Tests to be performed and rectification of defects.
- 26.2 Access: Without prejudice to the generality of the foregoing, the Contractor shall, insofar as it is able, afford such reasonable opportunities and access to:
- (a) any other contractors employed by or on behalf of the Owner and each of their personnel;
 - (b) the personnel of the Owner; and
 - (c) the personnel of any legally constituted public authorities, who may be employed in the execution on or near the Project Site of any work not included in the Contract, as shall enable each of these persons to carry out their work properly, efficiently and expeditiously.
- 26.3 Contractor's Responsibility for Location of Works: The Contractor shall be responsible for the locations of its Works, Contractor's Equipment and Supplier's Equipment (upon delivery by the Supplier to the Plant), in order to ensure that there is no conflict with the work of the persons listed at Clause 16.1.

- 26.4 No Extension of Time: The Contractor shall not be entitled to any extension of time or additional costs by reason of any delay, impediment or prevention caused by or attributable to:
- (a) any default, failure or deficiency in its coordination of its Works with the works of the Owner's other contractors on the Site; and/or
 - (b) any default, failure or deficiency in the Contractor's coordination of the rights of the Contractor and the Owner's other contractors on the Project Site in respect of access to, or possession of, the Project Site or any parts thereof.
- 26.5 Burden of Proof: Where any delay, impediment or prevention is alleged to be caused by, or attributable to, the Owner's other contractors on the Site, the burden shall be on the Contractor to show, insofar as any issue concerning this is raised, that such delay, impediment or prevention was not caused by, or attributable to, any default, failure or deficiency mentioned in Clauses 26.4(a) and/or 26.4(b).

27 OWNER'S VARIATION

- 27.1 No Variation by Contractor & Definition of Variation: The Contractor shall make no Variation to the Works except as ordered in writing by the Owner. A **Variation** shall mean any alteration in the Scope of Work, method of working, programme of work or to the type or extent of the Works, which is an amendment, omission or addition thereto. If no Variation order has been issued by the Owner in respect of an amendment, omission or addition which the Contractor considers is significant by itself or when taken together with previous ones not themselves covered by any Variation order, the Contractor may give notice to the Owner that the Contractor is of the opinion that a Variation order ought to be issued in respect of such amendment, omission or addition.
- 27.2 Owner's Variation: At any time during the performance of the Contract by the Contractor, the Owner may give the Contractor a Variation order in writing, specifying the Variation desired and, subject to the provisions of this Clause 27.1, the Contractor shall be bound by the same conditions, as if the Variation order were part of the original Contract. Except as provided in the last sentence of Clause 27.2, the Owner shall be entitled to require an addition to or deduction from the Contract Price where the effect of any Variation ordered is to increase or decrease as, as the case may be, the Cost to the Contractor of its execution of the Works. Additions to or deductions from the Contract Price shall be determined by the valuation of such Variation in accordance with Clause of Valuation of Variations.
- 27.3 Proceeding with the Variation Order: Notwithstanding that consequent additions to or deductions from (if any) the Contract Price remain to be determined or agreed, the Owner may order a Variation pursuant to Clause 27.2 if he feels that delaying the Variation order pending such determination or agreement would unnecessarily prejudice the satisfactory completion of the Works or cause avoidable harm to the interests of the Owner. In all other cases the Owner shall afford the Contractor reasonable opportunity to comment upon any Variation he proposes to order and shall request the Contractor to set out its proposals for consequent adjustments to the Works. The Contractor shall provide its proposals as soon as practicable and in any case within seven (7) days of receipt of such request by the Owner.
- When Owner raised a Variation Request Contractor shall confirm the same within [.] days in writing. The failure to which would be deemed as if the Contractor has accepted such variation order.
- 27.4 Contractor's Proposal on Variation: The Owner may at any time instruct the Contractor to prepare, or to assist him in the preparation of, a potential Variation to the Works and the Contractor shall with due diligence and expedition comply with such instruction and furnish to the Owner its proposals for the form and scope of the Variation in such detail as the Owner shall require and provide to the Owner a proposal as provided in Clause 27.2.

- 27.5 Notification of Response: If the Contractor is of the opinion that compliance with any Variation order would prevent him from or hinder him in fulfilling any of its obligations under the Contract he shall, before complying with the same, so notify the Owner within four (4) days and shall specify within a further three (3) days thereafter the respects in which he considers he would be so prevented or hindered. No Variation order in respect of which such a notification is given by the Contractor shall become binding unless it is thereafter confirmed by the Owner. If the Variation order is so confirmed, then the obligations of the Contractor and the Owner shall thereupon be modified to such extent as the Contractor and the Owner may agree.
- 27.6 Ground to Object to Variation: The Contractor may object to any Variation ordered or proposed upon the ground that compliance therewith would:
- (a) require the Contractor to act in breach of any enforceable undertaking or agreement with a third party;
 - (b) cause him to infringe any patent, registered design, design right, copyright or other protected right of any third party; or
 - (c) require the Contractor to do work or to exercise skills which are not of the kind the Contractor undertakes in the ordinary course of its business.

Any such objection by the Contractor shall be made in writing to the Owner as soon as reasonably practicable and, in the case of a Variation order, not later than seven (7) days from receipt of the order. In such case, the Owner shall review the nature of the Contractor's objection and shall notify the Contractor of its decision accordingly. The election of the Contractor not to object to any Variation ordered or proposed hereunder shall not imply an abandonment of its right hereunder to object to any subsequent Variation order or proposal.

28 CONTRACTOR'S VARIATIONS

- 28.1 Contractor's Proposal for Variation: The Contractor may at any time during its performance of the Contract submit a written proposal for a Variation to the Owner. If the Owner decides that the Variation should be incorporated into the Works or the Progress Schedule, he shall so order and the provisions of Clause 27 (Owner's Variation) and 29 (Valuation of Variations) shall apply thereto.
- 28.2 Response to Contractor: Where, however, the Contractor has stated in its proposals that the object of the Variation is to (i) eliminate a potential defect in the Works, or (ii) eliminate a specific hazard to any person or property in the performance of the Works or in the operation of the Plant that it is reasonably practicable to make safe (including any breach of a duty imposed by any applicable health and safety legislation), or (iii) bring the Contractor into compliance with the Law as a result of a Change in the Law, the Owner's decision not to order the Variation or not to order or propose an alternative Variation shall be notified to the Contractor. If such defect or potential hazard derives from (a) a breach of the Contractor's responsibilities under Clause of Responsibilities & Obligations of Contractor, or (b) should have been taken into account by the Contractor under Clause of Sufficiency of Contract Price, or (c) a delay in the performance of the Contractor to use reasonable efforts to take necessary action to avoid or mitigate any impact of a Change in the Law, the Contractor shall not be entitled to any extension of time or addition to the Contract Price for the Cost of implementing a Variation to the extent that it derives from the requirement to eliminate such potential non-compliance, defect or hazard.
- 28.3 Correction of Mistake: Without prejudice to the Contractor's obligations under Clause 32.11 (Mistakes in Documentation) and Clause of Liability for Defects, if the Contractor shall become aware that any item of the Plant or any part of the Works to be performed by the Contractor has been incorrectly specified in the Contract, the Contractor shall immediately give notice to the Owner, which notice shall include the

Contractor's proposals to resolve such error fairly and constructively. The Owner shall determine what action and what Variation may be needed and shall notify the Contractor accordingly.

29 VALUATION OF VARIATIONS

29.1 Adjustment to Contract Price: The amount (if any) to be added to or deducted from the Contract Price in respect of any Variation shall be such amount including profit as shall be valued by the Owner in accordance with this Clause 29.

29.2 Acceptance of Quotation: Notwithstanding this Clause 29, where a quotation for a Variation is accepted by the Owner, the amount specified therein shall constitute the addition to or deduction from the Contract Price, as the case may be, to be made in respect of the Variation.

29.3 Estimates for Variations: The Contractor shall, as soon as may be practicable, and in any case within seven (7) days of the receipt by the Contractor of a request from the Owner, provide an estimate for each Variation based on the rates and charges contained in the Contract if applicable, or as may otherwise be reasonable.

29.4 Agreement on Variation to Contract Price: Notwithstanding this Clause 29, the Owner and the Contractor may agree the amount to be added to or deducted from the Contract Price in respect of any Variation, whether as a result of negotiations upon an estimate or otherwise and such addition or deduction shall be made accordingly.

29.5 Valuation Methods: If Parties are not able to mutually agree on the amount to be added or deducted from the Contract Price, the Variation shall be valued as follows:

(a) Where the varied work is of a similar character to, is executed under similar conditions as and does not significantly change the quantity of work described in the Contract, the rates for the Works as set out in the Contract shall determine the valuation;

(b) Where the varied work is of similar character to work described in the Contract but is not executed under similar conditions of such work described in the Contract or involves significant changes in the quantity of such work described in the Contract, the rates for the Works as set out in the Contract shall be the basis for determining the valuation but with a fair allowance for any differences in such conditions and/or quantity;

(c) Where (a) and (b) above do not apply, then by measurement and valuation at fair market rates and prices;

Where none of the above methods is applicable or appropriate in the circumstances of the particular varied work, then the valuation shall be based on the cost of necessary materials, labour and any additional equipment necessary for the execution of the varied work plus ten per cent (10%). This percentage shall be deemed to compensate adequately the Contractor in respect of all supervision, the use of Contractor's Equipment, overheads, profit and all other loss, expense, costs or damages incurred in or connected with the execution of the varied work;

(d) The rates for the Works as set out in the Contract shall determine the valuation of items omitted; provided that if omissions vary the conditions under which any remaining items of work are carried out, the values for such remaining items shall be determined under Clauses 19.5 (b) or (c) or (d) as the case may be.

29.6 Records: In all cases where an adjustment will or may need to be made to the Contract Price in respect of a Variation, the Contractor shall keep contemporary records of the work, Supplies and resources

required to make the Variation and their Cost, together with such additional records as the Owner may direct at the time of issuing the order for the Variation, and all such records shall be open to inspection by the Owner at all reasonable times.

30 CONFIDENTIAL INFORMATION

Parties have entered into a non-disclosure agreement dated [.] which shall be a part of this GCC & Contract.

Or

- 30.1 Obligation of Strict Confidence: Where the Owner provides the Contractor with Confidential Information, the Contractor shall hold the Confidential Information in strictest confidence and shall disclose the same only to such employees, suppliers, Subcontractors or agents as are necessary to carry out the Works, and the Contractor shall ensure that each such employee, Subcontractor or agent (including employees of the Subcontractors and agents) having access to the Confidential Information shall enter into a confidentiality undertaking in a form specified by the Owner before access is granted.
- 30.2 Restriction on Usage: The Contractor shall not, without the previous written consent of the Owner use, nor cause nor permit any of its servants or agents to use any Confidential Information received by the Contractor otherwise than for the design, construction, operation, maintenance, repair or replacement of the Plant and associated facilities.
- 30.3 No Photographs: The Contractor shall not without the previous written consent of the Owner take or permit to be taken any photograph of the Works or the Plant or any part thereof for use in any publicity or advertising or give any information, photographs or illustrations regarding the Works to any journal or newspaper or any publishing, radio or television company. No photograph so taken shall be used without the previous written consent of the Owner.
- 30.4 Intellectual Property: All Confidential Information communicated by the Owner to the Contractor shall remain the property of the Owner at all times, and where applicable, shall be returned to the Owner immediately upon request, or upon the termination of this Contract (whichever is the earlier).
- 30.5 Contractor's conflict of interest: The Contractor shall not without prior written consent of the Owner participate in any business entity where use could be made of any information gained by the Contractor or relationships arising out of the Contract where such participation or action would conflict in any way with the interests of the Company under the Contract.

31 STATUTORY OBLIGATIONS, LABOR LAWS AND SAFETY REGULATIONS

31.1 GOVERNMENT REGULATIONS:

- (a) The Contractor shall comply and ensure strict compliance by his employees and agents of all applicable Central, State, Municipal and Local Laws and Regulations and undertake to indemnify Owner, its directors, officers and employees from and against all levies, damages, penalties and payments whatsoever as may be imposed by reason of any breach or violation of any law, rule, including but not limited to the claims against Owner under Workmen Compensation Act 1923, the Employees Provident Fund Act 1952. The Contract Labor (Abolition and Regulation) Act 1970, Factories Act 1948, Minimum Wages Act and Regulations, etc., and any Labor Laws which would be amended/modified or any new act if it comes in force whatsoever, and all actions claim and demand arising therefrom and/or related thereto.
- (b) The Contractor shall obtain and maintain all permits, licenses and approvals for the SOW and keep renewed throughout term of Contract

31.2 LABOR LAWS AND SAFETY REGULATIONS:

- (a)** No labor below the age of eighteen years shall be employed on the work.
- (b)** The Contractor shall not pay less than what is provided under law from time to time to laborers engaged by him on the work.
- (c)** The Contractor shall at his expense comply with all labor laws and keep the Owner indemnified in respect thereof.
- (d)** The Contractor shall ensure to keep and maintain all the statutory registers, records as required under provisions of Contract Labor (R & A) Act, 1970, Minimum Wages Act and the rules made thereunder, Employees Provident Fund Act, 1952 and keep the same available at the work site for inspection by Company's representatives and Government Authorities.
- (e)** The Contractor shall ensure that the employees employed by him are paid in accordance with Minimum Wage rates applicable and any changes in statutory wage rates and relevant special allowances are promptly implemented.
- (f)** The Contractor shall ensure that the employee employed will be covered under provisions of EPF Act and Regulations.
- (g)** The Contractor therefore will ensure that necessary contributions towards PF are deposited with the authorities concerned and the Contractor will maintain all the records as per provisions of EPF Act. If the Contractor fails to comply with the EPF Act, 1952 he shall be exclusively responsible and liable. The Contractor shall ensure that he arranges to deposit Professional Tax and other fees/amount etc.
- (h)** Workmen employed by the Contractor will be directly supervised and controlled by the Contractor or his representatives for works, discipline and behavior. The Contractor shall employ responsible Supervisor to be present always at the work site for ensuring proper progress of work, discipline and behavior of his workmen and also to ensure not to damage Company's property, Building, Machinery and any installation etc. Also Contractor shall ensure that the workmen do not carry any inflammable materials like match box and film etc., in prohibited areas.
- (i)** The Contractor shall be solely responsible for Safety of his workmen and to provide them adequate necessary equipment etc. and shall ensure to have all his workmen properly covered under the Standard and Registered Insurance Company Policies for any injuries, losses etc. to his workmen. The Contractor shall ensure to provide required transport, uniform, safety shoes & safety gadgets facilities to his workmen. If the Contractor fails to supply any safety equipment etc., to his workmen he shall be solely responsible and liable at all times.
- (j)** The Contractor shall ensure that the worker engaged by him are paid regularly and in no way shall Owner be responsible for the salary/emoluments or whatever dispute under the Labor Laws or other statues and rules of the State and Central Government concerning the service conditions of the workers employed by the Contractor.
- (k)** In respect of all labor, directly or indirectly employed in the work for the performance of Contractor's part of this agreement, the Contractor shall at his own expense arrange for all the safety provisions as per Indian Standards Institution, The Electricity Act and such other acts as applicable.
- (l)** The Contractor shall observe and abide by all fire and safety regulations of the Owner.
- (m)** Before starting construction work, Contractor shall consult with Owner's safety Engineer or Site-In- Charge and must make good to the satisfaction of the Owner any loss or damage due to fire to any portion of the work done or to be done under this agreement or to any of the Owner's existing property.
- (n)** The Contractor shall ensure and carryout his work safely, as per Standard Safety, all Fire and Security regulations and shall be liable to Owner for any damages by Contractor or his workmen or agent may cause while carrying out the works and to make good the same to Owner by payments

as assessed by the Owner.

- (o) The Contractor should possess a valid license for ESI/PF code and they should maintain a register for ESI / PF for all their workmen as per factory inspectorate.
- (p) The Contractor should comply with the minimum wages act as per prevailing Labor Law failing which; the contract is liable for cancellation without any prior intimation
- (q) BOCW Cess: The Vendor/Contractor/Business partner for carrying out any construction work in “Concerned State” must get themselves registered from the Registering Officer under section 7 of the Building and Other Construction Workers Act 1996 and rules made thereto by the “Concerned State” Government and submit certificate of Registration issued from the Registering Officer of the “Concerned State” Government (Labour Department). For enactment of this Act, the Vendor/Contractor/Business partner shall be required to pay BOCW cess as per statutory guidelines which is in percentage of cost of construction work and submit the certificate to AIL as proof of submission of BOCW. BOCW cess to be submitted within 15 days of award of contract/issuance of LOI/PO.

The BOCW Cess shall not reimbursed separately to Vendor/Contractor/Business partner and all the cost WRT the same to be inbuilt with the offer.

Any waiver WRT submission of BOCW by Vendor/Contractor/Business partner shall be only with written consent from AIL else Vendor/Contractor/Business partner has to take BOCW for all the construction contract awarded to them.

It is Vendor/Contractor/Business partner’s responsibility to take BOCW as per latest rules of State / central Govt / local authority and inform AIL regarding any changes of rules. It is the responsibility of the Vendor/Contractor/Business partner to track the latest rules WRT BOCW and any implication whatsoever it may be due to change in rules. In the event Contractor fails to pay such amount, Owner shall have right to deduct such amount from the amount payable to Contractor or from the bank guarantee taken for this purpose.

31.3 HEALTH AND SANITARY ARRANGEMENTS FOR WORKERS

- (a) In respect of all labor directly or indirectly employed in the works for the performance of the Contractor’s part of this agreement, the Contractor shall comply with or cause to be complied with all the rules and regulations of the local sanitary and other authorities or as framed by the Owner from time to time for the protection of health and sanitary arrangements for all workers.

31.4 IMPLEMENTATION OF APPRENTICES ACT 1961

- (a) The Contractor shall comply with the provision of the Apprentices Act 1961 and the Rules and orders issued thereunder from time to time, as applicable. Preference shall be given to the deserving local candidates while appointing Apprentice. The Contractor shall be liable for any pecuniary liability arising on account of any violation by him of the provision of the Act and shall indemnify Owner/Consultant towards any liability on account of this.

32 DOCUMENTATION

- 32.1 Copyright: Subject to the existence of any third party proprietary rights, the copyright in all Documentation made by the Contractor shall vest in, and is hereby assigned to, the Owner. The Contractor shall additionally use all reasonable endeavors to secure for the benefit of the Owner the copyright in all Documentation supplied by Subcontractors. Where necessary, such copyright shall be assigned to the Owner and the Contractor shall ensure, subject to the consent of the Contractor, that such a similar copyright assignment clause is included in all Subcontracts. It is further agreed that any addition/improvement/modification made independently by Owner on such documentations etc. then on same shall also be Owner’s proprietary and copyright information.

- 32.2 Submission: The Contractor shall submit in a reasonably ordered manner to the Owner for its approval three copies of the documents listed in the Contract, or if no such requirement is included in the Contract, three copies of such documents as the Owner may require.
- 32.3 Approval: Within fifteen (15) days from the receipt of any document for approval from the Contractor, the Owner shall either return one copy thereof to the Contractor with its approval endorsed thereon or shall notify the Contractor giving reasons for its disapproval thereof or of its conditional approval subject to any comments or queries which he may have thereon. In such case when the Owner disapproves a document the Contractor shall amend and resubmit the document to the Owner in accordance with Clause 32.2. For avoidance of doubt, any approval given by the Owner in relation to this Clause 32 shall neither constitute a waiver of any liability nor a variation of the terms set out in this Contract, and shall not relieve the Contractor in any way whatsoever from its responsibility for due performance of the Works in accordance with the terms of the Contract.
- 32.4 Disapproval: The Contractor shall not dispute the disapproval by the Owner of any document or amended document except on the grounds that the requirement of the Owner is not in accordance with some express provision of the Contract or that it is contrary to good engineering practice or has an adverse effect on safety.
- 32.5 Adherence to Documents: The Contractor shall not depart from any approved document unless he has first submitted an amended document to the Owner and obtained its approval thereof. The Owner's approval of any document submitted to Contractor shall not however relieve the Contractor of this responsibility under the Contract for the accuracy or sufficiency thereof.
- 32.6 Examination: The Contractor shall be bound to submit its Documentation for the examination by and/or approval of the Owner in such manner and detail as the Owner may require and the Contractor shall ensure that its Subcontractors are similarly bound.
- 32.7 Provision of Documents: Before the issuance of the Certificate of Substantial Completion, the Contractor shall provide the Owner with the manuals and other documents specified in the Contract or, if no such requirement is included in the Contract, as the Owner may reasonably require. Such documents shall describe or relate to the Plant as constructed.
- 32.8 Changes to Documents: Whenever the Contractor makes any change to the Plant as constructed and represented in such final documents, he shall, within a period of sixty (60) days, provide the Owner with new documents, revised to take account of such change.
- 32.9 Statutory and Insurance Requirement: Documentation of items subject to statutory design requirements and/or insurance approval shall be made available to the Owner and/or their insurers or agents at times appropriate for such purposes. Notwithstanding anything stated herein, Owner shall have the right to retain a copy of such documentation for its archival and backup purpose.
- 32.10 Completeness and Accuracy: The Owner shall be entitled to review such Documentation supplied by the Contractor in accordance with Clauses 32.6 and 32.7 for completeness and accuracy and to require its amendment by the Contractor as necessary at the Contractor's expense.
- 32.11 Mistake in Documentation: The Contractor shall be responsible at its own cost for correcting any error or omission in any document prepared by him or on its behalf, whether or not the Owner has approved any such document.

33 PROGRESS REPORTS

- 33.1 Submission of Progress Report: Without prejudice to the generality of Clause 32.1, the Contractor's Documentation shall include monthly progress reports prepared by the Contractor, which shall be

submitted to the Owner in three copies. The first report shall cover the period up to the end of the first calendar month following the Effective Date. Reports shall be submitted monthly thereafter, each within seven days after the last day of the period to which it relates.

- 33.2 Duration of Progress Reporting: Reporting shall continue until the Contractor has completed all work which is known to be outstanding at the completion date stated in the Certificate of Substantial Completion for the Works.

34 GENERAL PROVISION

- 34.1 Third Party Rights: This Contract is not intended to confer any rights or remedies upon, and shall not be enforceable by, any Person other than Parties (and their permitted successors and assigns)
- 34.2 Acceptance of Contract: The acceptance of the Contract by the Contractor shall be conveyed to the Owner within seven (7) days of the receipt of the Contract in writing failing which it will be presumed that the Contractor has accepted the terms and conditions incorporated in the Contract
- 34.3 Change of Name: At any stage after Bidding; the Owner shall deal with the Contractor only in the name and at the address under which it has submitted the Contract. All the liabilities / responsibilities for the execution of the Contract shall be those of the Contractor and in no circumstances he shall be relieved of any obligations under the Contract. The Owner may, however at its discretion deal with agents / representatives / distributors / manufacturers / associates / principals / sister concerns and such dealing shall not absolve the Contractor from its responsibilities/obligations/liabilities to the Owner under the Contract
- 34.4 Rights and remedies are cumulative: All rights and remedies provided in this Contract are cumulative and the exercise of one remedy by a party under Contract shall not preclude such Party from pursuing any other remedy under Contract, Applicable Law or equity.
- 34.5 Specific performance: The Parties agree and acknowledge that remedies set out herein alone would not be an adequate remedy for any breach of the Contract and the Owner shall be entitled to the remedies of specific performance or other equitable relief.
- 34.6 Survival: Notwithstanding the expiry or termination or sooner determination, for any reason, of this Agreement, clause 30 (Confidentiality), clauses related to (Indemnity), clause [.] (Notice), clause[.] (Governing law ,Jurisdiction and Dispute Resolution) and clause Miscellaneous) shall continue to bind each Party to give effect to their respective rights and obligations and shall survive such termination.

35 INSPECTION, OFF-SITE TESTS AND BACK CHARGES

- 35.1 Owner's Access to Premises: The Owner shall be entitled at all times to have access to any premises where Works are being carried out or Supplies are being manufactured, for the purpose of inspecting and observing the carrying out of tests on such Supplies. The Owner shall give reasonable notice of the facilities he requires and the Contractor shall secure such facilities both at those premises under its own control and those under the control of its Subcontractors.
- 35.2 Off-site Tests: The Contractor shall carry out such off-site tests as he considers necessary or as the Owner instructs before delivering to the Project Site the Supplies to which the off-site tests relate. Whenever the Contractor is ready to carry out any such off-site test he shall notify the Owner of the place where and the time when he intends to carry it out, such time being not less than ten (10) days later than the date of such notice.

- 35.3 Owner's Attendance at Off-site Tests. The Contractor shall carry out every off-site test at the time and place so notified. If the Owner has given the Contractor written notice of its intention to not attend any such test, then, unless the Owner instructs otherwise, the Contractor shall carry out the test in the absence of the Owner and the certified copies of the test results shall be deemed to be a correct record thereof. The Contractor shall provide the Owner with three certified copies of the test results.
- 35.4 Conduct of Off-site Tests: The Contractor shall provide all labour, materials and equipment necessary for the proper carrying out of all tests under this Clause 35.1.
- 35.5 Failure to Pass Tests: If any Supplies shall fail to pass any such test, the Contractor shall either rectify or replace the same and unless the Owner dispenses with a repetition of the test shall repeat the test following a further notice given under Clause 35.2. The length of such notice may however be less than ten (10) days if a lesser period is in the circumstances reasonable. The expense of any rectification and replacement shall be subject to the provisions of Clause of Liability of Defects. In the event of failure to pass test again, Contractor shall be liable to indemnify the Owner for all the losses including consequential losses incurred by the Owner.
- 35.6 Back charges: At any time after the Effective Date until the date of issuance of Final Certificate, if:
- a) the Contractor fails to properly commence the Works (or re-commence the Works following any suspension), abandon the Works, fails to follow the sequence of the Works specified in the Contract, fails to follow any Company instruction or otherwise takes any action (or omission) which in the opinion of the Company may adversely affect the Completion of the Works in accordance with this Contract; or
 - b) the Contractor is notified by the Company to correct any Works which do not conform to the requirements of this Contract and the Contractor (whether by notice or by its conduct) indicates that it is unwilling or unable to proceed with such corrective action; or
 - c) by reason of any accident or failure or event occurring to, in, or in connection with the Works or any part thereof, any remedial or other work, repair or clean-up is urgently necessary and the Contractor is unable or unwilling at once to do such work or repair; and / or

the Company (by itself or through any other contractors) may, without waiting, undertake all and any such work as it deems necessary by the most expeditious means available undertake such Works or repair as it considers necessary.

If the Company is required to take any action pursuant to above, it shall be entitled to recover such amounts from the Contractor by either (i) reducing the Contract Price by an amount equal to such amounts, or (ii) setting-off such amounts from any amounts due (or which amount due) to the Contract from any sums due by the Contractor to the Company.

36 THE SITE

- 36.1 Physical Conditions: It is hereby agreed that Owner shall provide the Site As-is-where is basis and The Contractor shall satisfy himself as to the nature and conditions of the Project Site / Works prior to commencing work thereon. In this Clause, "physical conditions" means natural conditions and man-made and other physical conditions and pollutants which the Contractor encounters at Project Site when executing the Works, including subsurface and hydrological conditions but excluding climatic conditions.
- 36.2 Adverse Conditions: If the Contractor encounters adverse physical conditions which may in any way affect the Works, the Contractor shall inform the Owner as soon as practicable and shall propose to the Owner the measures the Contractor intends to take to deal with and to overcome the adverse physical

conditions.

- 36.3 Dealing with Adverse Conditions: The Contractor shall continue executing the Works, using such proper and reasonable measures as are appropriate for the physical conditions, and shall comply with any instructions which the Owner may give. The Contractor shall take all measures and do whatever is appropriate and necessary to ensure that the adverse physical conditions are properly and expeditiously dealt with and to ensure that they do not cause undue delays to the Works.
- 36.4 Contract Price inclusive of Compliance Costs: The Contractor is deemed to have made all necessary allowances in the programming of the Works as well as for all costs in the Contract Price for compliance with the requirements of this Clause. Notwithstanding anything to the contrary in this Contract, no claims whatsoever, including downtime of machinery and plants, or delays to the Works, shall be entertained or allowed by the Owner and the Owner shall have no liability or responsibility, and no risk, obligation or liability of the Contractor under, or arising from, the Contract, at law or otherwise shall be relieved, on the ground of any misunderstanding or misapprehension in respect of any of the matters or circumstances referred to in this Clause or on the grounds that incorrect, inaccurate, insufficient or otherwise deficient documents or information were given to the Contractor by the Owner or any other person or that the Contractor failed to obtain correct or sufficient documents or information or failed to satisfy itself as to any matter or circumstance or on the ground that it did not or could not foresee any matter or circumstance which may in fact affect or influence or have affected or influenced the design, execution or other performance or provision of the Works or its other obligations under or arising from the Contract, at law or otherwise.
- 36.5 Access to Project Site by Contractor: The Owner shall give the Contractor access to the Site limited to render the services and restricted access to subcontractor. Contractor workmen should not be found moving across plant should be confined to dedicated site and follow all plant rules and regulations and safety guidelines including conditions pertaining to .:
- (a) by the date specified in the Special Conditions; or
 - (b) if no such date be specified in the Special Conditions, then in accordance with the Progress Schedule, if any; or
 - (c) if no such date be specified in the Progress Schedule, then in reasonable time to permit the Contractor to perform its obligations under the Contract.

If the Owner fails to give the Contractor access to the Site, the Contractor shall be entitled to an extension of time for the Time for Completion by the length of such delay of access to the Site.

- 36.6 Access to Project Site by Owner: The Contractor shall permit the Owner and their servants and agents to enter the Project Site at all reasonable hours for the purpose of inspecting the state of the Works and / or Plant, receiving training or performing their functions under the Contract and for the purpose of having other works carried out. The Contractor shall also permit other such contractors or suppliers engaged by the Owner to enter the Project Site and execute work or deliver goods at all reasonable hours. The Contractor must allow for all interference caused by such contractors or suppliers and the cost and time implications thereof shall be deemed included in the Contract Price and the Progress Schedule (including any revisions thereto).
- 36.7 No other persons allowed on Project Site: The Contractor shall not permit other persons whose presence on the Project Site is not necessary for the execution of the Works or for the execution of other work on behalf of the Contractor to enter the Project Site without the prior consent of the Owner.
- 36.8 No inconvenience or obstruction: The Contractor shall not interfere unnecessarily or improperly with:
- (a) the convenience of the public; or

- (b) the access to and use and occupation of all roads, waterways and footpaths, irrespective of whether they are public or in the possession of the Owner or of others, and the Contractor shall indemnify and hold the Owner harmless against and from all damages, losses and expenses (including legal fees and expenses) resulting from any such unnecessary or improper interference.
- 36.9 No interference: The Contractor shall not interfere in any way whatsoever with the operations and works on adjacent or neighbouring lands unless the express written consent of the Owner shall have been obtained and any proposed work or course of action to be taken (or not to be taken) complies with any rules, regulations or guidelines that may be set down for such purpose by any authorities having jurisdiction over the same. The Contractor shall indemnify and hold the Owner harmless against and from all damages, losses and expenses (including legal fees and expenses) resulting from any such interference.
- 36.10 Existing Installations: Where the Project Site or any part thereof is within or adjacent to any existing installations or facilities (whether operated by the Owner or by any other person), the Contractor shall be deemed to be fully aware of the manner of operation of such installations and facilities. The Contractor shall observe any restrictions, regulations or the like, including restrictions as to work methods, time and means of access, health, environmental and anti-pollution matters, imposed by the operator of such installations or facilities. The Contractor shall be deemed to have made due allowance in the Contract Price for any disturbance suffered in execution, completion and maintenance of the Works in consequence of the operation of such installations and facilities and of observing all such restrictions and regulations. The Contractor undertakes that in execution, completion and maintenance of the Works, the Contractor will so order its activities as to not interfere with or disrupt the operation of any such existing installations or facilities. The Contractor shall indemnify and hold the Owner harmless against and from all damages, losses, liability and expenses (including legal fees and expenses) resulting from (a) any injury to or death of persons working on, or damage to any property, whether owned by the Owner or otherwise, on such existing installation or facilities as a result of the Contractor's work on the Site; (b) any disruption or interference aforementioned. Further, in the event of any damage in any existing installation, Owner shall cause to repair the same, however any cost incurred in such repair should be deducted from the price payable to Contractor.
- 36.11 AIL conducts its business in accordance with the principle of sustainable development and complies with internationally recognized environmental, labor and social standards. AIL has described its concept and the implementation of these standards in AIL's Values and Principles. Equally, AIL expects its Business Partner (BP) to comply with comparable standards. Should AIL discover that the BP (or its subcontractor(s)) is in breach of these standards (e.g. relating to child labor, forced and compulsory labor), AIL reserves the right to terminate this order partially or completely. In addition, AIL asks the BP to urge its suppliers/subcontractors to introduce corresponding standards. The BP /contractor / Vendor has to adhere to Minimum wages act, Contract labor act, Provident fund act, ESI act, Factories inspector act, Child labor act, Equal wage act and all other laws applicable.
- 37 DELIVERY TO SITE**
- 37.1 Delivery of Supplies: The Contractor shall deliver or cause to be delivered to the Project Site all Supplies in accordance with the procedures contained in this Clause 37.
- 37.2 Adequate Facilities for Supplies & Equipment: Unless otherwise agreed with the Owner, the Contractor shall not deliver or cause Supplies or Contractor's Equipment to be delivered to the Project Site until he has provided adequate facilities at the Project Site for the proper unloading, storage and protection thereof pending their incorporation in the Works.
- 37.3 Delivery ahead of Progress Schedule: If the Contractor wishes any Supplies or Contractor's Equipment to be delivered to the Project Site before the time, if any, specified in the Progress Schedule of work, he shall obtain the written consent of the Owner before doing so.

- 37.4 Delivery behind Progress Schedule: If any Supplies or Contractor's Equipment are to be delivered to the Project Site seven (7) days or more after the time, if any, specified in the Progress Schedule of the work the Contractor shall draw this to the attention of the Owner in writing immediately upon its becoming aware of the delay, and shall take all necessary steps to minimize or reduce the impact of such delay on the progress of the Works.

38 OWNERSHIP OF PLANT AND SUPPLIES

- 38.1 Ownership of Supplies Vested in Owner & Indemnity: Throughout the course of the Contract, the Contractor shall ensure that property (both legal and equitable) in all the Supplies off the Project Site for which payment is made by the Owner for the purposes of the Contract shall be vested in and remain with the Owner. The Contractor shall insert such provisions in Subcontracts and purchase orders as may be necessary for this purpose. The contractor shall ensure that the said supplies can be identified from other plants and materials and are clearly marked as being the property of the owner.

The Contractor shall indemnify and hold the Owner harmless against and from all damages, losses, liability and expenses (including legal fees and expenses) resulting from the failure of the Contractor to comply with this Clause 38.

The Owner shall effect and maintain in force adequate insurance under Clause 43.5 (Insurance against injury to persons and property) in the said Supplies wherever they be located or transported. For avoidance of doubt, the property in all the Supplies other than the aforementioned shall vest in the Owner upon delivery to the Site.

It is agreed hereby that ownership of the Plant at all time shall remain with the Owner, however the risk passes once the defect liability period has been completed. In the event no defect liability period is there, risk shall pass once the warranty period is over or once the final clearance certificate has been provided as applicable to Contractor

- 38.2 No removal of Supplies: No Supplies shall be removed from the Project Site unless:

- (a) they are not in accordance with the Contract and are being removed for the purpose of modifications or replacement; or
- (b) they are surplus to the requirements of the Works and are being disposed of by or on behalf of the Owner, provided always that the Owner has previously given its written consent to their removal.

The Contractor shall not remove Contractor's Equipment from the Project Site without the prior consent of the Owner, but the Owner shall not refuse such consent if the Contractor's Equipment is no longer required for the execution of the Works.

39 SETTING OUT

The Contractor shall arrange for the setting out of the Plant by reference to points, lines, and levels of reference provided to him by the Owner. The Contractor shall arrange for the provision of all things whatsoever necessary for the setting out of the Plant and, notwithstanding any checking or approval by the Owner of the setting out of the Plant, the Contractor shall be responsible for the correctness thereof.

40 SITE MEETINGS

- 40.1 Regular Site Meetings: If the Owner so requires, meetings to review progress and discuss general matters relating to the Works shall be held at regular intervals at times to be fixed by the Owner at

intervals of not more than thirty (30) days. The Contractor's Representative and representatives of Subcontractors, as are appropriate and requested by the Owner shall attend such meetings, together with the Owner.

- 40.2 Minutes of Meeting: The Owner shall provide a chairman and minute secretary for each such site meeting and shall be responsible for the preparation of minutes of each such site meeting. Within seven (7) days after each such site meeting the Owner shall give three copies of those minutes signed on the Owner's behalf to the Contractor. If the minutes are an accurate and sufficient record of the site meeting the Contractor shall sign one copy thereof and return it to the Owner. If such minutes are not accurate or are insufficient the Contractor shall discuss and agree any necessary modifications thereto with the Owner before signing and returning such copy. Any site minutes or any part thereof signed both by the Owner and the Contractor as correct and sufficient shall constitute authorized site meeting minutes.

41 SITE CLEARANCE

- 41.1 Removal from Project Site: Unless otherwise agreed with the Owner, the Contractor shall arrange for the removal from the Project Site all Contractor's Equipment, temporary buildings and structures, debris and other things of its, other than for such of the foregoing things as are necessary for the proper performance of the Contractor's obligations after the taking-over of the Plant, and within fourteen (14) days of such taking-over, shall leave the Project Site in a tidy condition. Where the Plant is taken over by specified Section, the Contractor shall arrange for the removal of such things from within the perimeter of each such Section as it is taken over, or if there be no such defined perimeter, then from the area about the Section prescribed by the Owner. If the Owner shall so require, the Contractor shall arrange for the removal of surplus Supplies and dispose of them on behalf of the Owner.

- 41.2 Making Good Defects: As soon as the whole of the Works has been accepted, the Contractor shall remove all its things from the Site within [.] days from such acceptance, other than such things, if any, as are then known to be required for the making good of defects under Clause of Liability for Defects. However, during such period Owner shall not be liable or responsible for any theft or damage. Further, If any payments are due to Owner, Owner shall have the right to stop removal and continue to have lien and charge on it unless such amount has been paid. Contractor shall be fully liable and responsible for proper storage, handling and disposal of wastes in compliance with applicable laws.

42 CARE OF WORKS AND LIABILITY FOR DAMAGE & INJURY

- 42.1 Contractor's Responsibilities: The Works, the Supplies and all activities on the Project Site pursuant to the Contract shall be under the direction and control of the Contractor until the Works (or each specified Section thereof) is taken over by the Owner. The Contractor shall take full responsibility for the care of the Works and any Section thereof and for Supplies, Plant, Contractor's Equipment and Supplier's Equipment for incorporation therein from the Effective Date until the date stated in the Certificate of Substantial Completion issued pursuant to Clause 44.4, when such responsibility for the said care shall pass to the Owner. Provided that if the Owner issues a Certificate of Substantial Completion, the Contractor shall cease to be responsible for the care of that part from the date of issue of that Certificate of Substantial Completion and responsibility for the care of that part shall thereupon pass to the Owner. Provided further that the Contractor shall remain responsible:

- (a) for any loss or damage that may occur to the Works (or each specified Section thereof) caused by or as a result of its other activities on the Site. For the avoidance of doubt, the Contractor's obligations under this Clause shall continue after the Works (or each specified Section thereof) have been taken over by the Owner but before the issue of the Final Certificate where such loss or damage is a result of the actions or omissions of the Contractor, its servants or agents, or any Subcontractor; and

- (b) for the care of any outstanding work and Supplies and Plant for incorporation in the Works which he undertakes to finish during the Normal Warranty Period until such outstanding work has been completed.
- 42.2 Allocation of Responsibility for Damage, Loss or Injury: In case any damage loss or injury from any cause whatsoever shall happen to the Works or to any part thereof or to any Supplies or Plant for incorporation therein while the Contractor shall be responsible for the care thereof, save and except the Excluded Risks as defined below, the Contractor shall at its own cost undertake the repair, replacement and/or making good of the same, so that at completion the Works shall be in good order and condition and in conformity in every respect with the requirements of the Contract. In the event of any such damage, loss or injury happening from any of the Excluded Risks, the Contractor shall, if and to the extent required by the Owner, repair and make good the same as aforesaid at the cost of the Owner. The Contractor shall also be liable, and shall reimburse the Owner, for any damage loss or injury to the Works occasioned by him in the course of any operations carried out by him or by any Subcontractor engaged by him for the purpose of completing any outstanding work or complying with its obligations under Clause in Contract.
- 42.3 Definition of Excluded Risks: The "Excluded Risks" are:
- (a) Force Majeure; and
- (b) any cause due to any neglect or default by the Owner, its employees or agents in the course of their employment. In the event of loss or damage arising from a combination of an Excluded Risk and a risk for which the Contractor is responsible under this Clause, then the cost of repair, replacement and/or making good shall be borne by the Parties in due proportion to their respective liabilities.
- 42.4 Indemnity by Contractor: The Contractor shall assume the entire responsibility for and shall hold the Owner harmless against all losses, liabilities, claims, costs and expenses whatsoever arising directly or indirectly out of or in connection with or as a result of:
- (a) any bodily injury, sickness, disease or death, of any person whatsoever arising out of or in the course of or by reason of the design, execution, completion and maintenance of the Works and the remedying of any defects, unless attributable to any negligence, wilful act or breach of the Contract by the Owner or any of its agents, or anyone directly or indirectly employed by him.
- (b) any damage whatsoever to any property real or personal (as the case may be) insofar as such damage arises out of or in the course of or by reason of or in connection with the carrying out of the Works, unless attributable to the wilful act or neglect on the part of the Owner or any of its agents, or anyone directly or indirectly employed by him.
- 42.5 Indemnity by Owner: The Owner shall assume the entire responsibility for and shall indemnify and hold the Contractor harmless against all losses, liabilities, claims, costs and expenses whatsoever arising directly out of or in connection with or as a result of death or personal injury to any person in the employment of the Owner.

43 INSURANCE

43.1 Automobile Liability Insurance:

- (a) It shall cover the use of all vehicles used by the Contractor or its Subcontractors (whether or not owned by them but excluding Owner's vehicles) in connection with the execution of the Contract. All vehicles to comply with the provisions of the Motor Vehicle Act and the Owner in no case shall be liable for non-compliance of such statutory provisions by the Contractor.
- (b) Motor vehicle policy should also take add-ons like personal accidents to be paid to drivers, cleaners & conductors, legal liability to drivers, employees of contractors traveling etc.

43.2 Workmen Compensation:

- (a) The Contractor shall effect and maintain insurance against liability for claims, damages, losses, and expenses (including legal fees and expenses) arising from injury, sickness, disease or death of any Manpower or Subcontractor or their representatives.
- (b) The insurance shall be maintained in full force and effect during the whole time that the Manpower is assisting in the execution of the Services. For a Subcontractor's employees, the insurance may be affected by the Subcontractor, but the Contractor shall be responsible for compliance with this Clause. In no event shall the Owner be responsible or liable for the payment of compensation to any Contractor's Personnel or Subcontractor's Personnel. Owner shall have the right to recover/adjust or set-off the amount of compensation, if any, paid by the Owner as a result of the failure of the Contractor to comply the conditions of the Workmen Compensation Act from all current and future amounts due and payable by the Owner to the Contractor.

43.3 Insurance for Tools and Tackles & Property:

- (a) The Contractor shall insure all its Tools and Tackles & property including furniture, fixtures, and all other its/its Subcontractor's property for not less than the full reinstatement cost including the costs of demolition and removal of debris. This insurance shall be effective during the entire period of the Contract.
- (b) The Contractor shall maintain this insurance to provide cover during the entire period of Contract for loss or damage to the Tools and Tackles and/or property including third party liability against all risks including natural catastrophe.
- (c) For earthmoving equipment, registered by RTO, both CPM and Motor policies shall be taken. For unregistered vehicles, CPM alone would suffice.

43.4 Operational Policy for Assets:

- (a) Insurance cover for operational assets shall be in the scope of the Owner. The owner shall decide on the type of policy to be taken, the values to be considered for the purpose of insurance and the coverage to be taken.

43.5 Third-Party Liability Insurance (Insurance against Personal Injury and Damage to Third-party Property):

- (a) The Contractor shall insure against any loss or damage, which may occur to any property owned by Owner/ third party and any person, for death or bodily injury which may arise out of or in consequence of Contractor's performance of the Services.
- (b) Cross Liability Insurance - Any loss or damage to the property of the Contractor or Owner by another Contractor/Subcontractor and vice versa to be covered by the Contractor.

43.6 Professional Indemnity Insurance Policy:

- (a) The Contractor shall take an insurance policy covering any loss of or damage to the property of the Owner to cover liability falling on them as a result of errors and omissions committed by them whilst rendering professional service.

43.7 Other Insurances

- (a) The Contractor shall take any other insurance as may be specifically stated in the SCC/ Contractor required to perform the Services by the Contractor.
- (b) The Contractor shall deliver to the Owner certificates of insurance (or copies of the insurance policies) as evidence that the required policies are in full force and effect. The certificates shall provide that not less than fifteen (15) days' notice shall be given to the Owner by all the insurers prior to cancellation or material modification of a policy.
- (c) The Contractor shall ensure that, where applicable, its Subcontractor(s) shall obtain and maintain in effect adequate insurance policies for the Subcontractor's personnel and vehicles and for Services executed by them under the Contract, unless such Subcontractors are covered by the policies obtained and maintained by the Contractor.

- (d) The Contractor shall maintain and keep in force all insurances during the period of Contract until completion of Services. If the Contractor fails to effect and keep in force any of the insurances it is required to effect and maintain under the Contract, or fails to provide satisfactory evidence and copies of policies in accordance with this Sub-Clause, the Owner may (at its option and without prejudice to any other right or remedy) effect insurance for the relevant coverage and pay the premiums due. The Owner under such circumstances shall be entitled to reimbursement/ recovery from Contractor for the amount of premiums paid along with the penalty equivalent to premium paid. Nothing in this Clause limits the obligations, liabilities or responsibilities of the Contractor under the other terms of the Contract or otherwise. Any amount not insured or not recovered from the insurers shall be borne by the Contractor in accordance with these obligations, liabilities or responsibilities.
- (e) Unless otherwise provided in the SCC/ Contract, the Contractor shall prepare and conduct all and any claims made under the policies affected by it pursuant to this GCC Clauses, and all monies payable by any insurers shall be paid to the Owner as "Loss Payee". The Owner shall give to the Contractor all such reasonable assistance as may be required by the Contractor with respect to insurance claims in which the Owner's interest is involved; the Contractor shall not give any release or make any compromise with the insurer without the prior written consent of the Owner.
- (f) For insurances under the Owner's scope, the Contractor shall give to the Owner all such reasonable assistance including filing of claims & documents to Govt. bodies as may be required by the Contractor with respect to insurance claims.
- (g) All deductibles, exceptions, and exclusions applicable to the Insurance covers even if insurance has been taken by the Owner, shall be for the account of and to be borne by the Contractor. Any breach of conditions and/or warranties of the insurance policies by Contractor and/or its Subcontractor shall also be to the account of and to be borne by the Contractor.
- (h) Contractor shall furnish to the Owner, cover notes / Insurance Policies from Contractor's insurance underwriters reviving the all insurance coverage required by this clause before the start of Services including evidence of premium payments thereof.
- (i) No insurance shall be canceled or discontinued without prior written permission from the Owner. If such insurance is canceled or discontinued, the Contractor shall be responsible for all its consequences and the Owner can obtain the insurance on behalf of and at the cost of the Contractor to protect its interest.

43.8 Owner's Representative

- (a) Owner may appoint one or more of the Owner's Representatives at the Plant to do such acts, deeds, matters and things as may be necessary to safeguard the Owner's interest. Such appointments shall be in writing. The Owner may replace the Owner Representative(s) and shall notify the Contractor of such change.
- (b) The Owner's Representative shall be the sole point of communication for the Contractor on behalf of the Owner. All communications, Instructions, notices, etc. shall be issued by the Owner's representative on behalf of the Owner. The Contractor shall also provide all notices, letters, and communications for the Owner to the Owner's Representative.

43.9 Provision of Owner's Interest:

- (a) The insurance referred to above shall be with reputable insurers approved by the Owner and on such terms approved by the Owner for such minimum coverage value as stipulated in Contract or special conditions, if any, and the
- (b) Contractor shall upon request deposit with the Owner certificates of insurance as evidence of the policy or policies and the receipts in respect of premiums paid. The above insurances shall also name the Owner as co-insured and shall contain a waiver of subrogation rights, cross liability provision, and thirty (30) days' notice to be given to the Owner for any amendment or cancellation of the said policies. The Contractor shall submit certified copies of the above insurance policies to the Owner at least four (4) days prior to its commencement of work at the Site.
- (c) **Prompt rectification of damage:** In the event of any loss or damage giving rise to a claim under the Owner's insurance referred to in the above clauses, the Contractor shall proceed immediately to repair, rectify or replace the damaged work and Supplies and erect and complete the Plant in

accordance with this Contract. Such repair, rectification, replacement, erection and/or completion shall be paid for by the Owner as additional to the Contract Price to the extent of the amount of the claim received by the Owner under his insurance, unless attributable to any act, omission, wilful misconduct or gross negligence on the part of the Contractor or their Subcontractors.

- (d) **Insurance payments irrelevant to Contract Price:** All moneys paid by the insurers pursuant to the above clauses will be paid directly to the Owner. The occurrence of any loss or damage for which any payment is made to the Contractor under the Owner's insurance policy shall be disregarded in computing any amounts payable to the Contractor under or by virtue of the Contract.

43.10 Contractor's Default:

- (a) If the Contractor makes default in insuring or continuing to insure as aforesaid, the Owner may himself insure against any risk in respect of which the default shall have occurred and a sum equivalent to the amount paid by him in respect of premiums may be deducted by him from any monies due or to become due to the Contractor, or such amount may be recoverable by the Owner from the Contractor as a debt. The Contractor shall not be entitled to any payment in respect of the restoration of work damaged, the replacement and repair of any unfixed Supplies or goods, and the removal and disposal of debris other than the monies received under the aforesaid insurances.

43.11 Excesses and Claim Processes

- (a) With reference to the Owner's procured insurance, the Contractor shall bear the cost of any excesses applying to any insurance claims caused by the Contractor and shall in making any claim comply with any insurance claims procedures prescribed in the Contract and in the relevant insurance policies. The Contractor shall make all Subcontractors aware of this obligation and shall ensure that all Subcontractors comply with such obligation.

43.12 TRANSIT INSURANCE:

- (a) From the point of delivery of the GOODS to the Owner, the Owner shall cover the GOODS in transit under the Owner's comprehensive transit-cum-storage-cum-erection-commissioning policy.
- (b) The Contractor shall intimate the Owner the following details by telefax/telex/telegram before dispatch of the GOODS so as to enable the Owner to arrange transit insurance as per the format annexed hereto.
- The Contract number and the Contract Date;
 - Invoice Number, Invoice Date & Value;
 - Bill of Lading/ Airway Bill number and Date; and
 - Name of Vessel/ Name of Airline

44 COMPLETION OF CONSTRUCTION

44.1 Construction Completion Report: As soon as the Plant, or any appropriate part thereof, is in the opinion of the Contractor substantially complete and ready for inspection, the Contractor shall so notify the Owner by means of a "**Construction Completion Report**". This report shall state which parts of the Plant the Contractor proposes to demonstrate have been completed in accordance with the Specification and have passed such tests as may require under the terms of this Contract. The Contractor shall propose a programme for such demonstrations commencing not sooner than seven (7) days nor later than fourteen (14) days after the date of the notice, unless the Owner otherwise agrees in writing.

44.2 Acceptance Report: The Owner shall review the Construction Completion Report and respond to the Contractor with an acceptance report ("**Acceptance Report**"), with an addendum stating that the Contractor has demonstrated to the Owner that the Plant or part thereof is substantially complete and in a condition such that any procedures needed before the Plant is put into operation may safely be carried out. Such Acceptance Report may include a note of any minor items requiring completion before the issue of the Certificate of Substantial Completion.

44.3 Commissioning and Performance Testing: In accordance with the programme accepted by the Owner,

the Contractor and the Owner will commence the starting up and commissioning of the Plant, and shall jointly undertake the Performance Tests with the Supplier (for the Critical Equipment) in accordance with Clause in Contract.

44.4 Certificate of Substantial Completion:

44.4.1 Upon the satisfactory completion of any such Performance Tests, the Contractor and the Owner's Representative acting on behalf and for the account of the Owner shall either:

(a) issue to the Contractor a "Certificate of Substantial Completion" for the Plant, stating the date on which in his opinion the Works were substantially completed in accordance with the Contract; or

(b) give instructions in writing to the Contractor specifying all works which in his opinion are required to be done by the Contractor before the issue of a Certificate of Substantial Completion.

44.4.2 If the Owner has given an instructions pursuant to Clause 44.4.1(b),

(a) he may inform the Contractor of any defect in the Works affecting substantial completion that may appear after such instruction and before completion of the works specified therein and such defects shall comprise part of the said instruction;

(b) the Contractor shall not be entitled to be issued the Certificate of Substantial Completion until the works specified in the said instructions have been completed to the satisfaction of the Owner.

45 PERFORMANCE TESTS

45.1 Performance Guarantees: The Contractor hereby guarantees the Project shall comply with the Performance Guarantees set forth in the Special Conditions during the Performance Testing. The Contractor acknowledges and agrees that all testing of Project shall be conducted by the Owner under the supervision and with reasonable assistance of the Contractor and the Supplier (if applicable) and in accordance with the manuals provided by the Contractor pursuant to Clause of documentation and such other instructions as the Contractor may give in the course of carrying out such tests. If such instructions conflict in any way with the said manuals, the Contractor shall issue them in writing in the form of an amendment to the manuals. The Performance Tests shall be carried out as far as practicable under the conditions, if any, detailed in the Special Conditions.

45.2 Exclusion of Liability: The Contractor assumes full responsibility and liability under this Contract for any failure of Project for any reason to meet the applicable Performance Guarantees as provided in this Contract, except for any failure to meet Performance Guarantees as a result of a manufacturing defect directly attributable to a Supplier.

45.3 Contractor's Access: The operation of the Plant by the Owner for commercial purposes shall not prevent the Contractor from having reasonable access to the Plant in order to ensure that the Plant has passed all its Performance Tests and/or that its continuance would not endanger life or cause damage to the Plant.

45.4 Conduct of Performance Test: Every Performance Test shall be carried out to completion as may be specified in Special Conditions unless either the Owner or the Contractor shall order it to be stopped because its continuance would endanger life or cause damage to the Plant.

Notwithstanding anything to the Contrary in this Contract, the Contractor shall prepare - not less than three (3) months before the date of Mechanical Completion - a procedure in conformity with the

requirements in the Specification which describes the Preparation of Commissioning, Commissioning, Test Run, and Verification of Performance Figures of the Unit. The procedure shall be subject to the Owner's approval. If the procedure is rejected for important reasons, the necessary changes are subject to agreement between Contractor and Owner.

If and when, in the opinion of the Contractor, the entire Scope of Delivery and Work is complete pursuant to the Contract and ready for Acceptance, the Contractor shall submit to the Owner a written application for granting Acceptance of the Unit.

If and when the entire Scope of Delivery and Work has been delivered pursuant to the Contract, the Owner shall grant the Contractor Acceptance by issuing to the Contractor an Acceptance report (in reference to Clause 32.2) for the Unit.

If the Scope of Delivery and Work is incomplete and/or defective and the work still wanted or existing defects are, in the opinion of the Owner, minor, the Owner shall be entitled to conduct the Acceptance procedure. Work still wanted and/or existing defects shall be identified in the Acceptance report of the Unit. The Contractor shall promptly perform work still wanted and/or eliminate defects, no later than within a period as may be agreed between the Owner and the Contractor and stipulated in the Acceptance Report. Upon completion of the work still wanted and/or rectification of defects, such work shall be subject to separate acceptance by the Owner. Acceptance of such work shall be documented in a supplement to the Acceptance Report regarding Acceptance.

If the Scope of Delivery and Work has not been performed pursuant to the Contract, the Owner shall be entitled to refuse Acceptance of the Unit. The Contractor shall bring about Contractual Performance promptly, but no later than a reasonable deadline as may have been set by the Owner. Subsequently, the Contractor shall again apply for Acceptance. In the event that at the time of repeated Acceptance procedure, the Scope of Delivery and Work has again not been performed pursuant to the Contract, the Owner shall be entitled to perform or have performed by third parties the supplies and/or services still wanted and claim damages from the Contractor to cover the expenditure incurred. The Owner shall be entitled to request the Contractor to make an advance payment to cover the expenditure to be incurred as above. The Owner's further rights shall remain unaffected.

The Contractor shall furnish to the Owner at any time upon request of the Owner a list of all the supplies and services still wanted from the Contractor prior to Acceptance. The risk for the entire Scope of Delivery and Work until Acceptance shall be borne by the Contractor. In particular, the Contractor shall bear the risk of accidental loss and accidental impairment of items, products, substances, etc. supplied by the Owner.

Final Acceptance shall be granted by the Owner after all warranty claims have become time-barred. The Owner shall issue a report of Final Acceptance of the Unit.

- 45.5 Failure to Meet Performance Guarantees: In the event the Performance Testing does not yield results meeting the applicable Performance Guarantees set forth above, then, the Contractor shall continue, at its sole cost and expense, in conjunction with the Supplier (if any), to repair, redesign, correct or modify the Material and/or the Project to meet the Performance Guarantees, and the Owner shall be entitled to additional Performance Tests until the Performance Guarantees for the Project have been demonstrated and met. In the event, however, the Performance Guarantees have not been met in their entirety by a successful Performance Test on or before the Final Extension Date, then the Contractor shall be obligated to pay to the Owner the Performance Liquidated Damages for failure to meet the Performance Guarantees as set forth below, based on the results of the most recent full Performance Test of Project.

<u>Criterion</u>	<u>Guaranteed Values</u>	<u>Liquidated damages</u>
XX	XXX	XXX

45.6 Performance Liquidated Damages: In the event the Performance Testing does not demonstrate that the Performance Guarantees, as set forth in Clause 33.5 above, have been met or exceeded on or before the Final Extension Date, then, Performance Liquidated Damages shall be payable by Supplier, in each case prorated if the variance or shortfall includes a portion of a percentage or fraction of a whole number, as set out in the aforesaid table and / or specified in the Special Conditions of Contract (such Performance Liquidated Damages to be determined on a cumulative basis, based on the most recent full Performance Test).

46 LIABILITY FOR DEFECTS

46.1 Contractor's Liability to Make Good Defects: The Contractor's liability for making good defects in the Works shall commence upon the issuance of the Certificate of Substantial Completion for the Contract and shall continue up to the expiry of eighteen (18) months after the issue of the Certificate of Substantial Completion [or twelve (12) months from the date the Plant goes into production start-up, whichever is earlier] ("**Normal Warranty Period**"). During the Normal Warranty Period, the Owner shall:

(a) decide if any work done or Supplies supplied by the Contractor is or are defective or not in accordance with the Contract (normal wear and tear excepted) or that the Plant or any portion thereof is defective or does not fulfil the requirements of the Contract (all such matters being called '**Defects**');

(b) as soon as reasonably practicable give to the Contractor notice in writing of such decision giving particulars of the alleged Defect(s); and so far as necessary and practicable, place the Plant at the Contractor's disposal, then the Contractor shall within such period as the Owner may prescribe, and, in the absence of such prescribed period, as soon as reasonably practicable, make good the Defects so specified subject to the Owner affording the Contractor the necessary access and, where appropriate, permitting any defective Supplies to be removed. The Contractor shall, if so required by the Owner, submit its proposals for making good any Defect to the Owner for its approval.

Making good of defects shall include the re-performance of any services and/or the repair or replacement of any defective Supplies to ensure that any defects or deficiencies in the Works are rectified and the Works are in compliance with the requirements of this Contract.

46.2 Cost of Making Good Defects: If any Defect is attributable to any act or omission of the Contractor, the Contractor shall bear its own cost of making good the Defect. In the case of any other Defect made good by the Contractor, the work done by the Contractor shall be treated as if it were a Variation ordered by the Owner and shall be valued accordingly.

46.3 Repeated Performance Testing: If a Defect is made good after the issuance of a Certificate of Substantial Completion, the Owner may require the Contractor to repeat any appropriate performance tests following the making good of such Defect for the purpose of establishing that the Defect has indeed been made good.

46.4 Extended Warranty Period: If in the course of making good any Defect, the Contractor replaces or renews any portion of the Plant, the provisions of this Clause shall apply to the repair or to that portion of the Plant so replaced or renewed until the expiry of a period of three hundred and sixty-five days (365) from the date of such replacement or renewal or twenty-four months after the issue of the Certificate of Substantial Completion, whichever is later (the "**Extended Warranty Period**").

46.5 Latent Defect Warranty period: The Contractor shall remain liable for any **Latent Defects** (Defect in the goods which could not have been discovered by reasonable diligence, examination, inspection or testing of the goods) for a further period of twelve (12) months from the expiry of Normal Warranty Period (the "**Latent Defects Warranty Period**") and all the Warranties shall be applicable during such further period.

46.6 Owner's Right to Make Good for Urgent Matters: If the Owner reasonably requires that any Defect

- notified to the Contractor under Clause 34 be made good urgently and the Contractor is unable to comply or refuses to make good any such Defect within a reasonable time, then the Owner may, without prejudice to any other remedies or relief available to him under the Contract, proceed to make good such Defect in such a manner as the Owner shall decide, including the employment of any third party at the risk and cost of Contractor and all such costs to be deducted from amount payable to Contractor.
- 46.7 Owner's Right to Make Good on Contractor's Failure: If the Contractor neglects or refuse to make good within a reasonable time any Defect for which he is responsible under Clause 34, then the Owner may, without prejudice to any other remedies or relief available to him under the Contract, proceed, or employ others to proceed, to do the work, provided that the Owner gives at least seven (7) days' notice of its intention in writing. For the avoidance of doubt, the performance of any work by third parties pursuant to Clauses 46.6 and 46.7 shall not invalidate, abrogate, or in any way prejudice the Owner's rights under any warranties given by the Contractor, whether under the Contract or otherwise.
- 46.8 Indemnity: If the Owner has made good a Defect pursuant to either Clauses 46.6 or 46.7 then the Contractor shall pay and keep the Owner indemnified of all costs and expenses arising out of or in connection therewith.
- 46.9 Extension of Normal Warranty Period: If the Plant, or a specified Section thereof, cannot be used because of a Defect to which this Clause applies, the Normal Warranty Period shall be extended by a period equal to the period during which it cannot be used, notwithstanding that the Owner was unable to identify the Defect during the original Normal Warranty Period.
- 46.10 Contractor's Right of Reasonable Access. Subject to the prior written agreement of the Owner and until the Final Acceptance, the Contractor shall have the right of reasonable access during all reasonable working hours, at its own risk and costs, by himself or its duly authorized representatives whose names shall previously have been communicated in writing to the Owner, to inspect the relevant pre-agreed parts of the Plant, and where the Contractor can demonstrate in writing to the Owner's reasonable satisfaction, the need for testing, the Contractor may at its own risk and cost make such pre-agreed tests that are demonstrated to be necessary.
- 47 FINAL CERTIFICATE**
- 47.1 Issuance of Final Certificate: As soon as the Normal Warranty Period for the Plant has expired or the Contractor has made good all defects that have within such period appeared in the Plant in accordance with Clause 46 (Liability for Defects), whichever is the later, and provided the Contractor has signed the letter of final release, the Owner shall issue forthwith to the Contractor a certificate (herein called a 'Final Certificate') stating that the Works are finally complete on that day on the basis of which Owner has granted after all warranty claims have become time-barred. The Contractor shall have no right or obligation to do any further work for any part of the Plant after a Final Certificate has been issued for that part.
- 47.2 No Representation: For the avoidance of doubt, the issue of a Final Certificate by the Owner shall not constitute for any purpose and in any proceedings whatsoever between the Owner and the Contractor conclusive evidence that the Contractor has completed the Works and made good all Defects therein in all respects and all warranty claims have become time-barred in accordance with its obligations under the Contract.
- 47.3 Outstanding Warranty on Works: If in consequence of the replacement or repair by the Contractor of any Supplies, the Normal Warranty Period therefore has begun to run afresh in accordance with Clause 34.4, but has not expired, the Owner shall nevertheless issue a Final Certificate for the remainder of the Works in which the Supplies are included as soon as the provisions of Clause 47 are otherwise satisfied, provided that the repaired or replaced Supplies are then free from any Defects which the Contractor is

bound to make good under Clause 46 (Liability for Defects) during the Extended Warranty Period.

- 47.4 No Final Certificate to be issued: If the repetition of any Performance Tests has been deferred in accordance with Clause 47.3, then no Final Certificate shall be issued in respect of the Plant to which such tests relate, as the case may be, until the Plant thereof has passed or is deemed to have passed such Performance Tests.

48 PERFORMANCE SECURITY AND ADVANCE PAYMENT SECURITY

- 48.1 Provision of Performance Security: Contractor shall, for securing due performance of its obligations under the Contract Documents, provide an unconditional and irrevocable bank guarantee issued by any Nationalized/Scheduled Bank acceptable to Owner (except co-operative banks & foreign banks without any branch in India) in the format provided by the Owner ("**Performance Security**"). The Performance Security shall be provided to Owner within fifteen (15) days from the date of issue of the Contract. The amount of Performance Security shall be equivalent to Five (05) percent of the Contract price. In the event there is a change in Scope of Services or a Variation which results into an increase in the value of the Contract or the Parties agree on an extension in the Term of the Contract, the value and validity of the Performance Security i.e. the Contract Performance Bank Guarantee (CPBG) shall also be proportionately increased.
- 48.2 Form of Performance Security: Upon Completion/Commissioning of the Services, the Contractor shall furnish a Performance Bank Guarantee (PBG) issued by any Nationalized/Scheduled Bank (except co-operative banks) equivalent to 10 (Ten) percent of the Contract Price of the Services as further specified in the SCC/ Contract.
- 48.3 Performance Guarantee to Cover Variations: The Performance Guarantee shall be binding notwithstanding such variations, alterations or extensions of time as may be made, given, conceded or agreed under the Contract.
- 48.4 Validity of Performance Guarantee: The validity of the Performance Guarantee shall remain in force during the Contract period and continue until thirty (30) days after the Final Acceptance.
- 48.5 Extension of Validity: In the event that the Contractor has not fulfilled all its obligations under the Contract by any expiry date specified in the original Performance Guarantee, the Contractor shall, prior to such expiry date, arrange for the extension of the validity of the Performance Guarantee by such period or periods as is considered necessary by the Owner in order to meet the requirements of this Clause 48.4.
- 48.6 Failure to Provide Performance Guarantee: The Owner shall not be under any obligation to make any payment to the Contractor until such time as it has received a Performance Guarantee conforming to the requirements of Clause of this Contract.
- 48.7 Rights to Deduct Performance Guarantee: The Owner shall be entitled, without prejudice to any other right or remedy hereunder, to demand under the Performance Guarantee for an amount equivalent to the amount of any damages suffered (including without limitation Liquidated Damages for Delay and Performance Liquidated Damages) and any other sum payable to the Owner remaining unpaid or loss or damage, sustained by the Owner as the result of any breach, non-observance or non-performance by the Contractor of any term or condition in this Agreement.
- 48.8 Reinstatement of Performance Guarantee: In the event that the Owner has called on the Performance Guarantee and received payment, the Contractor shall on written demand by the Owner forthwith further deposit with the Bank an amount to reinstate the Performance Guarantee to the percentage of the Contract Price set out in the Special Conditions.

48.9 Reduction of Performance Guarantee: Without prejudice to the generality of the foregoing, if the Contractor is in compliance with all its obligations under the Contract, the Performance Guarantee may

be reduced to a revised percentage as set out in the Special Conditions upon the issuance of the Certificate of Substantial Completion.

48.10 Provision of Advance Payment Guarantee: The Contractor under conditions of availing the Advance Payment shall furnish a Bank Guarantee (in the Owner's prescribed format) against the amount of Advance Payment issued by any Nationalized/Scheduled Bank (except co-operative banks) and which shall be valid up to Contract period for Completion /Commissioning of the subject Services with a claim period of 30 Business Days beyond validity.

49 TWELVE MONTHS PERIOD OF LIABILITY FROM THE DATE OF ISSUE OF COMPLETION CERTIFICATE

49.1 The Contractor shall guarantee the installation/work for a period of 12 months from the date of issue of completion certificate or any other period as specified in special conditions or Contract. Any damage or defect that may arise or lie undiscovered at the time of issue of completion certificate, connected in any way with the equipment or materials supplied by him or in the workmanship shall be rectified or replaced by the Contractor at his own expense as deemed necessary by the Engineer-in-Charge or in default, the Engineer-in-Charge may cause the same to be made good by other workmen and deduct expenses (of which the certificate of Engineer-in-Charge shall be final) from any sums that may be then or at any time thereafter, become due to the Contractor or from his Retention money or the proceeds of sale thereof, or of a sufficient portion thereof.

49.2 If the Contractor feels that any variation in work or in quality of materials or proportions would be beneficial or necessary to fulfil the guarantees called for, he shall bring this to the notice of the Engineer-in-Charge in writing.

49.3 Care of Works

(a) From the commencement to completion of the works, the Contractor shall take full responsibility for the care for all works including all temporary works and in case any damages, loss or injury shall happen to the works or to any part thereof or to any temporary works from any cause whatsoever, shall at his own cost repair and make good the same so that at completion the work shall be in good order and in conformity in every respects with the requirements of the Contract and the Engineer-in-Charge's instruction.

49.4 Defects Prior to Taking Over

(a) If at any time before the work is taken over, the Engineer-in-Charge shall:

- Decide that any work done or materials used by the Contractor or any Sub-Contractor is defective or not in accordance with the Contract, or that the works or any portion thereof are defective, or do not fulfil the requirements of Contract (all such matters being hereinafter, called 'Defects' in this clause), and as soon as reasonably practicable gives to the Contractor notice in writing of the said decision, specifying particulars of the defects alleged to exist or to have occurred, then the Contractor shall at his own expense and with all speed make good the defects so specified.
- In case Contractor shall fail to do so, the Owner may take, at the cost of the Contractor, such steps as may in all circumstances, be reasonable to make good such defects. The expenditure so incurred by the Owner will be recovered from the amount due to the Contractor. The decision of the Engineer-in-Charge with regard to the amount to be recovered from the Contractor will be final and binding on the Contractor. As soon as the works have been completed in accordance with the Contract (except in minor respects that do not affect their use for the purpose for which they are intended and except for maintenance thereof provided in clause 49.1 of General Conditions of the Contract) and

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After passing the tests on completion, the Engineer-in-Charge shall issue a certificate (herein after called completion certificate) in which he shall certify the date on which the works have been so completed and have passed the said tests and the Owner shall be

deemed to have taken over the works on the date so certified. If the works have been divided into various groups in the Contract, the Owner shall be entitled to take over any group or groups before the other or others and thereupon the Engineer-in-Charge shall issue a completion certificate which will, however, be for such group or groups so taken over only.

49.5 Defects after Taking Over

- (a) In order that the Contractor could obtain a completion certificate he shall make good with all possible speed any defect arising from the defective materials supplied by the Contractor or workmanship or any act or omission of the Contract or that may have been noticed or developed, after the works or group of the works has been taken over, the period allowed for carrying out such work will be normally one month. If any defect be not remedied within a reasonable time, the Owner may proceed to do the work at Contractor's risk and expense and deduct from the final bill such amount as may be decided by the Owner.
- (b) If by reason of any default on the part of the Contractor a completion certificate has not been issued in respect of every portion of the works within one month after the date fixed by the Contract for the completion of the works, the Owner shall be at liberty to use the works or any portion thereof in respect of which a completion certificate has not been issued, provided that the works or the portion thereof so used as aforesaid shall be afforded reasonable opportunity for completing these works for the issue of completion certificate.

50 RECORDS AND AUDITS

- 50.1 Records to be kept: Contractor shall keep books and records to the Owner's satisfaction in such a manner as to enable the Owner to carry out effective financial control with respect to all payments made or due to be made pursuant to the Contract.
- 50.2 Access to Records: The Contractor shall afford all reasonable access to the Owner or any auditing firm appointed by the Owner to such books and records as may be necessary to show that the Contractor's Costs have been properly charged under the Contract. Any auditing firm to be appointed by the Owner shall be under an obligation to keep confidential and not disclose, other than to the Owner, any information obtained from auditing the Contractor's books and records.
- 50.3 Owner shall have the right to conduct quality audits on the Works at site by the Contractor at all times including before demobilization of the Contractor.

51 OWNER'S DEFAULT

- 51.1 Without prejudice to any other rights the Contractor may terminate this Contract by giving a notice of termination to the Owner upon the occurrence of any of the following events (each, a "Owner Event of Default"):
 - (a) Owner (i) is insolvent, (ii) files a voluntary petition for winding up or has an involuntary petition for winding up filed against it that is not dismissed within thirty (30) days of such involuntary filing, (iii) admits the material allegations of any petition of winding-up filed against it, (iv) is adjudged insolvent, or (v) makes a general assignment for the benefit of its creditors, or a receiver is appointed for all or a substantial portion of its assets and is not discharged within thirty (30) days after its appointment;
 - (b) Owner is in breach of any of its representations, warranties, conditions or obligations under the

AIL/ENGG PROJECT Documents, which breach is not cured within a period of thirty (30) Business Days from the date of giving of notice of such breach by the Contractor to the Owner. Immediately upon notification of such breach by the Contractor, the Parties may nominate their respective Authorized

Representatives to enter into consultations for identifying the measures which could be employed by the Owner for remedying such breach within the aforesaid cure period.

52 CONTRACTOR'S DEFAULT

The term of this GCC must be as specified in Contract or any other special conditions or work order between parties.

52.1 Events of Default – Immediate Termination

If the Contractor:

- (a)** becomes bankrupt or insolvent or makes a composition with creditors or if, being a company, goes into liquidation (other than a voluntary liquidation for the purposes of reconstruction or amalgamation), or any winding up order of any kind is made, or if a receiver or manager of the Contractor's undertaking or assets is appointed, or possession taken or execution levied by the creditors or debenture holders or under a floating charge, or if a judicial manager is appointed;
- (b)** gives or offers to give (directly or indirectly) to any person any bribe, gift, gratuity, commission or other thing of value, as an inducement or reward:
 - (i) for doing or forbearing to do any action in relation to the Contract; or
 - (ii) for showing or for bearing to show favour or disfavor to any person in relation to the Contract,
 - (iii) or if any of the Contractor's employees, agents or Subcontractors gives or offers to give (directly or indirectly) to any person any such inducement or reward as is described in this Sub-Clause; or
- (c)** has already become liable to pay the maximum amount of liquidated damages that it is liable to under Clause 13.3 and the Time for Completion of the Works or Section (as the case may be) has elapsed;
- (d)** made any material representation or warranty which is incorrect as of the date made and remains incorrect at the time in question;
- (e)** persistently disregards or fails to comply with any applicable Laws or permits, then without prejudice to any other rights or remedies which the Owner may possess the Owner may forthwith determine & terminate the employment of the Contractor under the Contract.
- (f)** has any investigation, inquiry or proceedings initiated or notified by any judicial/statutory or enforcement agency for breach of anti-bribery and anti-corruption laws or money laundering
- (g)** breaches or violates of third party IPR or confidential information

52.2 Events of Default –Termination Up on Notice

If the Contractor shall be in default in any one or more of the following respects, i.e.:

- (a)** without reasonable cause suspends or abandons the carrying out of the Works before completion thereof or otherwise plainly demonstrates the intention not to continue performance of its obligations under the Contract;
- (b)** fails to proceed regularly and diligently with the Works;
- (c)** fails to correct any Defects discovered during performance of the Work or any Defects advised by the Owner or any representative of the Owner within the Normal Warranty Period;
- (d)** fails to make prompt payment in accordance with its Subcontract obligations of undisputed invoices due to Subcontractors or for Supplies or labour;
- (e)** persistently or repeatedly refuses or fails, except in cases for which an extension of time is

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Contractor shall supply sufficient properly skilled workmen or proper equipment and Supplies to perform the Works at a rate that gives reasonable assurance to the Owner that the Contractor shall complete the Works within the Time for Completion;

- (f) repudiates or is in default with respect to any of its obligations to any Subcontractor; or
- (g) fails to perform any material obligations under this Agreement; then, without prejudice to any other rights or remedies which the Owner may possess, the Owner may give the Contractor written notice specifying such default and if the Contractor shall fail to commence the rectification of such default within a period of seven (7) days after receipt of such notice, or shall at any time thereafter repeat such default within a period of fourteen (14) days after receipt of such notice, or shall at any time thereafter repeat such default, then the Owner may forthwith determine & terminate the employment of the Contractor under the Contract.
- (h) Digital Payment: Contractor shall not disburse any payment in cash to the labours or subcontractors or any other agencies. The mode of payment for any of the above cited transactions must be done either through direct bank transfer or by any other digital mode. Non-compliance of Clause 52.2 h) may lead to termination of the contract without any liability to AIL.

52.3 Obligations Upon Termination:

In the event of Contract being terminated under Clauses 52.1 and 52.2 above, the following shall be the respective rights and duties of the Parties:

- (a) the Owner may employ and cause to pay other persons to carry on and complete the Works and he and they may enter the Plant and use the Contractor's Equipment, Supplier's Equipment, Supplies and any other things whatsoever brought to the Project Site by the Contractor, and the Contractor shall have no recourse to any payment for the use thereof and shall not remove such Equipment until the completion of such Works;
- (b) the Contractor shall, when so required by the Owner, forthwith deliver to the Owner all Confidential Information together with all Documentation and technical information prepared by the Contractor as referred to in Clause of Documentation;
- (c) the Contractor shall assign to the Owner all its rights under any Subcontracts and other contractual agreements (including warranties), and to the extent assignable, all issued permits, licenses, authorizations, approvals, patents and other proprietary rights, if any, pertaining to the Project as may be designated by the Owner without any right to compensation;
- (d) the Contractor shall cease all further Works, except such Works as the Owner may specify in the termination notice for the purpose of protecting that part of the Work already executed;
- (e) the Contractor shall protect the part of the Works already executed and all Supplies on the Project Site under the Contractor's custody; and
- (f) the Contractor shall supply any proprietary component, if any, needed for the completion and operation of the Project.
- (g) Subject to clause (a) above, the Contractor shall remove itself and all its belongings within XX days of termination and handover the vacant possession of premises / site to Owner

52.4 Losses Recoverable as Damages: Without prejudice to any other rights of the Owner in contract and/or at law, all loss and expenses incurred by the Owner due to the default of the Contractor shall be recoverable from the Contractor as damages.

53 SUSPENSION OF THE WORKS

53.1 Owner's Power to Suspend: The Owner shall have the power to suspend performance of all or any part of the Works by an order ("**Suspension Order**") given to the Contractor in writing and the Contractor shall thereupon shall do so until ordered to resume performance by the Owner. A Suspension Order shall be final and binding on the Contractor and shall not be challenged in arbitration or in court

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Upon receipt of a Suspension Order, the Contractor shall immediately advise the Owner on any aspects of the Works which need to be continued to maintain the safety and/or security of the Works.

- 53.2 Additional Costs Incurred: If the Contractor shall be delayed in the performance of any of its obligations under the Contract by any Suspension Order given by the Owner (other than a Suspension Order given by reason of the Contractor's default), then any additional Cost reasonably incurred and substantiated by the Contractor as a result of the Suspension Order shall be paid to the Contractor by the Owner, provided the quantum of cost shall be subject to the approval of the Owner. No such cost shall however be payable hereunder unless within seven (7) days of its being delayed by the Suspension Order in question the Contractor shall notify the Owner of its intention to claim such additional cost. The failure to give the requisite notice shall preclude the Contractor from making a claim at any subsequent stage for additional cost in respect of the Suspension Order.
- 53.3 Suspension Exceeding 120 Days: If by virtue of any Suspension Order (other than by reason of the Contractor's default), the Contractor's performance of any of its obligations is suspended for a continuous period of one hundred and twenty (120) days, then at any time thereafter and provided that such performance is still suspended, the Contractor may give notice to the Owner requesting that within thirty (30) days of such notice, the Owner may either withdraw the Suspension Order and instruct the Contractor to resume such performance, or issue a Variation Order excluding the suspended obligation from the Contract. If the Owner shall fail to do so then upon the expiry of the notice the Contract shall be terminated and thereupon the rights and obligations of the Parties shall be the same as if the Contract has been terminated under Clause of Termination by the Owner).
- 53.4 Extension of Time for Completion: If the Owner withdraws any Suspension Order then, subject to the approval of the Owner, the Progress Schedule and Time for Completion shall be extended by the full period of suspension (other than a Suspension Order given by reason of the Contractor's default).

54 TERMINATION BY THE CONTRACTOR

- 54.1 If Contractor elects to terminate this Contract upon the occurrence of a "Owner Event of Default", then without prejudice to any other rights or remedies of Contractor in this Contract or at law or in equity, the Contractor shall be entitled to:
- (a) the payment of all dues payable to the Contractor under the Contract upto date of termination;
 - (b) the release of the Performance Security.
- 54.2 Provided, however, all dues payable to the Contractor under this Clause 21.6 shall be first set off against any amounts owed by the Contractor to the Owner under the provisions of the Contract Documents.

55 TERMINATION BY THE OWNER

- 55.1 Owner's Right to Terminate: The Owner may at any time terminate the services rendered by the Contractor under the Contract by written order to the Contractor ("**Termination Order**").
- 55.2 Within six (6) months or as the case may be prior to the end of the Term of the Contract, the Owner shall survey the Plant and the Plant Facilities to determine the extent of wear and tear or damage to the Plant and the Plant Facilities, and after the survey the Owner will provide the details of the damage required to be made good at the Plant and the Plant Facilities, which the Contractor shall undertake and complete prior to the end of the Term of the Contract, at its own cost and expense. For the avoidance of doubt, the Contractor shall not be liable to make good the normal wear and tear to the Plant and the Plant Facilities.

expiry of the Term, as the case may be, the Contractor shall return the consumables forming part of the Free Issue Materials that have not been consumed by the Contractor to Owner, along with an inventory reconciling the consumables issued by the Owner and the

consumables utilized by the Contractor. To the extent there is any shortfall in the consumables which ought to be returned to the Owner, the Contractor shall compensate the Owner for such shortfall at its replacement cost. Free Issue Materials shall be returned to the Owner in the same condition in which they were provided by Owner to the Contractor, except normal wear and tear. As regards other Free Issue Materials (i.e. spares, tools, tackles, machines and equipment, etc. which are not consumables), the Owner shall inspect these materials to determine the extent of wear and tear or damage. After the inspection the Owner will provide the details of the damage to the Free Issue Material required to be made good by the Contractor. The Contractor undertakes to make good such damage at its own cost and to the extent that such damage cannot be made good, the Contractor agrees to compensate the Owner for such materials at their replacement value

55.4 Within fifteen (15) days from the expiry of the Term/ serving the termination period of the Contract, as the case may be, the Contractor shall, de-mobilize its Manpower and demolish, dismantle and remove all Temporary Works which the Owner has not agreed to take over and leave the Plant clean and clear of all Encumbrances. Notwithstanding anything to the contrary in this Clause 55.3, upon such takeover, the Owner shall have the option but not an obligation to absorb and hire any of the Manpower deployed by the Contractor in the Plant and the Plant Facilities on terms which are mutually acceptable to the Owner and such Manpower.

55.5 The Contractor shall ensure that adequate numbers of physical and soft copies of all manuals, logs and records of the Plant Facilities and any other document prepared by it in relation to the provision of Services are handed over to the Owner free of charge. Upon transfer of such manuals, logs, documents and records, all Intellectual Property Rights existing in such documents shall be deemed to be licensed to the Owner on a perpetual, irrevocable, unconditional, exclusive and fully paid up basis, with the right to use, copy, amend, modify and sublicense the same to third parties.

55.6 Obligations on Termination: The Contractor shall upon receipt of a Termination Order cease all further work on the Site, other than such work as the Owner may instruct for the purpose of protecting, making safe or tidying up such parts of the Works as may already have been executed or be in the course of execution. The Contractor shall upon completion of such work, if any, remove all Contractor's Equipment from the Project Site and withdraw from the Project Site leaving it in as tidy a condition as is practicable. The Contractor shall as soon as practicable after receipt of the Termination Order also cease all such further work as is being done off Project Site in performance of the Contract.

55.7 Subcontracting & Assignment:

The Contractor shall either:

(a) secure the cessation of further work by its Subcontractors in accordance with and subject to the provisions of the preceding Sub-Clause (so far as possible) such cessation shall be secured by the exercise by the Contractor of such powers of termination, omission, or cancellation as are available to him in the relevant Subcontracts.

(b) if so required by the Owner the Contractor shall assign to the Owner or such third party designated, any contract designated by the Owner in preference to cancelling or terminating it.

55.8 Assignment of Rights: In the event of termination of the Contract by the Owner under this Clause, the Contractor shall, immediately upon receipt of the Termination Order or on such later date as may be specified in the said Termination Order, assign to the Owner or its nominees to the extent desired by the Owner all or any rights and title held by the Contractor relating to the Supplies and the Plant, together with the obligations connected therewith. The Contractor shall also deliver to the Owner or its nominees all erection plans, schedules and Documentation prepared by the Contractor or Subcontractors in

AIL/ENGG-PROC/001/2019-2020 R-001. All drawings, specifications, bills of materials, and all documentation supplied by the Contractor or on behalf of the Owner in connection with the Works.

55.9 Issuance of Termination Certificate & Calculation of Amounts Due to Contractor: Within ninety (90) days of the Contractor's withdrawal from the Site, or if the Contractor has not entered the Project Site before receipt of the Termination Order, then within ninety (90) days of its receipt of the Termination Order, the Owner shall, subject to the provisions Clause 40.8 issue to the Contractor a Termination Certificate which shall state:

- (a) the aggregate amount due from the Owner to the Contractor under the Contract for Works executed prior to the date of receipt by the Contractor of the Termination Order;
- (b) the aggregate amount due from the Owner to the Contractor in respect of any irrevocable commitments that the Contractor has undertaken in continuance of the Works;
- (c) the aggregate amount due from the Owner to the Contractor in respect of any costs, damages, cancellation charges, etc. which have been properly incurred and substantiated by the Contractor directly on account of termination of the Contract under this Clause and for which the Contractor has not otherwise been reimbursed. For the avoidance of doubt, such damages shall only cover direct costs on the Contractor arising from contractual obligations relating to the execution of this Contract. They shall not include consequential business losses said to be incurred by the Contractor;
- (d) the total amount already paid by the Owner to the Contractor under the Contract; and
- (e) the balance due to the Contractor or to the Owner as the case may be.

The amount to be certified under paragraph (e) shall be the amount of paragraph (a) plus the amount of paragraphs (b), and (c) minus the amount of paragraph (d) i.e. [(e)=(a)+(b)+(c)-(d)]. Should the resultant amount under paragraph (e) be a negative amount it shall constitute a balance payable to the Owner, otherwise it shall constitute a balance payable to the Contractor.

55.10 Adjustments to Include Damages: For the purposes of the preceding Clause 55.5 only, additions to and deductions from the Contract Price shall include any damages due from one Party to the other in respect of any breach of the Contract committed before the Contractor's receipt of the Termination Order.

55.11 Calculation of Amounts: For the purpose of calculating the amounts of paragraphs (a), (b), and (c) of Clause 40.5, account shall be taken in favour of the Owner of the realizable value of all things belonging to the Contractor and purchased by him in accordance with the Contract.

55.12 Provision of Information & Documents: As soon as practicable, the Contractor shall provide the Owner with all such information and documents as he may reasonably require for the purpose of issuing the Termination Certificate.

55.13 Determination of Amount if no Final Termination Certificate: If it is not possible for the Owner to issue a final Termination Certificate by reason of any unresolved dispute between the Contractor and any Subcontractor or by reason of any other matter which prevents the ascertainment of the amount of paragraphs (b), (c) and (e) of Clause 40.5, the Owner shall, at the expiration of such period, issue a provisional Termination Certificate which shall contain the best estimate that can be made of the said paragraphs (b), (c) and (e) of the resultant balance due. As soon thereafter as the ascertainment of the amount of the said paragraphs (b), (c) and (e) becomes practicable, the Owner shall issue a final Termination Certificate which shall operate as a correction or adjustment of the Provisional Termination Certificate and payment shall be made between the Owner and the Contractor accordingly.

55.14 Payment of any balance due to the Contractor in any provisional or final Termination Certificate shall be made pursuant to Clause 7.

55.15 Termination of the Contract shall be without prejudice to the continuing rights and obligations of the Parties hereto with regard to confidentiality as provided by Clause of Confidential Information.

56 LIMITATION OF LIABILITY

56.1 Maximum Liability: The Contractor's obligation to perform the Works in accordance with the provisions of this Contract shall be without limitation or restriction. Notwithstanding the foregoing, the Contractor's maximum liability to the Company arising out of this Contract shall not exceed 100 % of the Contract Price, provided that the foregoing amount shall not include and there shall be no limitation or restriction on the Contractor's liability to the Company due to actions or omissions of the Contractor or of any party within the accountability of the Contractor, with respect to:

- a) the imposition of any liens or encumbrances against any portion of the Works or any other property of the Company in breach of Clause 8;
- b) any fraud or Willful Misconduct;
- c) any of the Contractor's indemnity obligations under this Contract;
- d) any recoveries under any Builders "All Risk" Insurance or cargo or transit insurance;
- e) any rejection of the Works;
- f) any costs incurred in order to repair and replace Works or Resources including costs related to achieving the Performance Criteria and the Contractor's obligations for the duration of the Normal Warranty Period;
- g) any costs incurred by the Company which are recoverable from the Contractor (as expressly provided for in this Contract); and
- h) Special, Indirect and Consequential Damages
- i) breach of third party intellectual property rights or confidential information
- j) breach of applicable laws of india
- k) any environmental dues payable;

56.2 Except as otherwise provided for in this Contract, neither Party shall be liable to the other for special, indirect or consequential damages resulting from or arising out of this Contract, or for loss of profits or business interruptions, however they may be caused.

56.3 For the avoidance of doubt neither:

- (a) any liquidated damages payable by the Contractor pursuant to Clause 14; or
- (b) any costs incurred by the Company which are recoverable from the Contractor (as expressly provided for in this Contract), shall be construed as special, indirect or consequential damages for purposes of this Clause.

57 IMPROVEMENT AND INVENTIONS

57.1 Owner's Benefit to Invention: In the event that during the execution of the Works the Contractor shall make any discovery, improvement or invention, addition or modification relating to the design and/or operation of the Plant or any part thereof ("Invention"), then subject to the provisions of Clause 57.3 below, the Owner shall be entitled to the full and exclusive benefit of the Invention and shall have the sole right to apply for patent or such other protection as the Owner may deem appropriate in relation to the same.

57.2 Assignment of Rights: The Contractor shall:

- (a) give the Owner written notice of the Invention;
- (b) execute any document which the Owner may deem necessary to vest in the Owner the property in the Invention;

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the Owner do all such acts and things as the Owner may deem necessary for the purpose of applying for letters patent or other protection in respect of the Invention.

- 57.3 License to Use: In the event that the Owner informs the Contractor that the Owner does not wish to apply for letters patent or other protection in relation to the Invention in any particular country, then the Contractor shall be entitled to apply in that county for letters patent or such other protection as the Contractor may deem appropriate in relation thereto and shall grant to the Owner under any patents or other proprietary rights to obtain such royalty-free non-exclusive license in respect of the use thereof as the Owner may require.
- 57.4 Patent Pending: If a claim is received by the Contractor in relation to any Invention and for which the Owner is applying for a Patent, then notice thereof shall be given to the Owner.

58 RECOVERY OF SUMS DUE & SETTING-OFF

Whenever, under the Contract, any sum of money shall be recoverable from or payable by the Contractor, the same may be set off or deducted by the Owner from any sum then due or which at any time thereafter may become due to the Contractor under the Contract. The exercising, by the Owner, of its right under this Clause shall be without prejudice to any other rights or remedies available to the Owner under the Contract.

59 DISPUTE RESOLUTION

59.1 Reference to Adjudication

(a) Governing Law and Jurisdiction

This Agreement shall be governed by and construed in accordance with the laws of India, without regard to the conflicts of law rules thereof, and any disputes will be subject to the provisions of clause below.

Dispute Resolution: If any disputes or difference arises between the parties hereto in connection with or arising out of the validity, interpretation, implementation, termination or alleged breach of any provision of, or based on any matter arising out of or in connection with, or any compliance of this Agreement, or the transactions contemplated hereby or thereby ("Dispute"), the Parties shall endeavor to negotiate and settle the Dispute amicably within 30 days of any such Dispute having arisen and escalate the matter for resolution to the level of their respective chief executive officer or equivalent person. If a Party gives notice to the other Party that a Dispute has arisen and the Parties are unable to resolve the Dispute amicably within aforesaid period of such notice, the attempt to bring about an amicable settlement shall be considered to have failed.

In the event the Parties fail to amicably resolve the Disputes within the aforesaid time, the same shall be referred to arbitration of a sole arbitrator appointed in accordance with the rules of the Mumbai Centre for International Arbitration (MCIA) as amended or modified from time to time. The venue of arbitration shall be at Mumbai. The Arbitration proceedings shall be conducted in the English language. The Award passed by the sole arbitrator shall be final and binding on the Parties.

- (b) Notwithstanding the foregoing, the competent courts at Mumbai shall have sole and exclusive jurisdiction to try and entertain any disputes arising between the parties.

- 60.1 **No Waiver:** The failure to exercise or delay in exercising a right or remedy provided by this Contract or by law does not constitute a waiver of the right of remedy or a waiver of other rights or remedies. A

waiver of a breach of any of the terms of this Contract or of a default under this Contract will not prevent a Party from subsequently requiring compliance with the waived obligation. The rights and remedies provided in this Contract are cumulative and not exclusive of any other rights or remedies (whether provided by law or otherwise).

- 60.2 **Waiver Only in Writing:** Any provision or breach of any provision of this Contract may be waived only if the relevant Party so agrees in writing. Any waiver or consent given by the relevant Party under any provision of this Contract must also be in writing. Any such waiver or consent may be given subject to any conditions thought fit by that party and shall be effective only in the instance and for the purpose for which it is given.

61 JOINT AND SEVERAL LIABILITY

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

- (a) these persons and/or entities shall be deemed to be jointly and severally liable to the Owner for the performance of the Contract;
- (b) these persons and/or entities shall notify the Owner of their leader who shall have authority to bind the Contractor and each of these persons; and
- (c) the Contractor shall not alter its composition or legal status without the prior consent of the Owner.

62 ACTING AS PRINCIPAL & NO JOINT VENTURE

The Contractor confirms that it is acting in this matter as third party principal and not as agent or brokers for the Owner or any other person, and shall not have the power or authority to bind the Owner in any contractual relationship or to represent the Owner in any way, including (without limitation) negotiations, meetings or proceedings without the expressed written consent of the Owner. Nothing contained in this Agreement shall be construed as constituting a joint venture or partnership between the Contractor and the Owner.

63 SEVERABILITY

Any provision of this Contract which is held invalid or unenforceable in any jurisdiction shall be ineffective to the extent of such invalidity or unenforceability without validating or rendering unenforceable the remaining provisions of it, and any such invalidity or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provisions in any other jurisdiction.

64 ENTIRE AGREEMENT

- a. This Contract constitutes the entire agreement and understanding between the Parties with respect to the subject matter hereof and supersedes any previous understandings or agreements between the Parties, written and unwritten, with respect to any such matters.
- b. AIL shall reserves the right to modify the GCC from time to time.

65 AMENDMENT

No amendment or variation of this Contract shall be valid and effect unless in writing and signed by or on behalf of each Party.

66 GOVERNING LAW AND JURISDICTION

66.1 GOVERNING LAW AND JURISDICTION-INTERNATIONAL

(a) Each Party irrevocably submits to the exclusive jurisdiction of the Courts as decided in the specific conditions or Contract.

66.2 GOVERNING LAW AND JURISDICTION-DOMESTIC

- (a)** This Agreement shall be governed by, construed and enforced in accordance with the Laws of the Republic of India
- (b)** Each Party irrevocably submits to the exclusive jurisdiction of the Courts at Mumbai, Maharashtra, India

67 FURTHER ASSURANCES

Each Party agrees to execute and deliver all further instruments and documents, and take all further action not inconsistent with the provisions of this Contract that may be reasonably necessary to complete performance of the Works and to effectuate the purposes and intent of this Contract.

68 SPARE AND WEARING PARTS

- 68.1** To ensure the continuity of operation of the Unit, the Contractor shall have the spare and wearing parts of the Unit that are listed by the Contractor, and to provide them to the Owner upon request.
- 68.2** Parts kept in stock by the Contractor: Spare and wearing parts of the Unit that the Contractor has to keep in stock in its warehouse are identified in the Contract with an X (hereinafter referred to as "IN-STOCK PARTS"). If during performance of the Contract the parties define more parts as IN-STOCK PARTS, document shall be modified accordingly
- 68.3** The Contractor undertakes to keep IN-STOCK PARTS ready in the specified warehouse until all warranty claims under this Contract have become time-barred. The Contractor undertakes to deliver IN-STOCK PARTS to the Owner within specified & mutually agreed hours after receipt of a corresponding written request. The Contractor shall keep the IN-STOCK PARTS ready at no charge to the Owner.