

SUB PACKAGE – Earth Cutting Works

(Earth Cutting Works for 400kV D/C Quad Teesta III HEP – Kishanganj Transmission Line)



VOLUME – I CONDITIONS OF CONTRACT

Specification Nos.: SUB PACKAGE-EARTH CUTTING WORKS :TPTL/ECW



**Teestavalley Power Transmission Limited,
2nd Floor, Vijaya Building, Barakhamba Road
New Delhi - 110001.**

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SECTION - I

SECTION – I: INFORMATION TO BIDDERS (IFB)

M/s Teestavalley Power Transmission Ltd. (TPTL) is a Joint Venture between M/s Teesta Urja Ltd. (TUL) and M/s Power Grid Corporation of India Ltd. (POWERGRID) for construction, operation & maintenance of 400 kV D/C Transmission Line from Teesta III Hydro Electric Project (1200 MW) of M/s Teesta Urja Ltd in the State of Sikkim to Kishanganj Pooling Station of POWERGRID in the State of Bihar of length 215 km. Route alignment of the transmission line passes through North Sikkim, East Sikkim, South Sikkim, West Bengal Hills (Darjeeling Hills), West Bengal Plains and Bihar.

Construction of aforesaid Transmission Line in South Sikkim is in advanced stage of completion. Out of a total of 65 locations, foundation works at 63 locations and erection works at 60 locations have already been completed. Also, 18 km out of a total 20.7 km of stringing in the above section have been completed.

However, after the stringing works were carried out, it was found that statutory electrical clearances at a few sections were not present. Hence it is necessary to carry out Earth Cutting Works in South Sikkim to maintain the statutory electrical clearances.

TPTL hereby invite sealed tender from you for carrying out Earth Cutting Works to maintain statutory electrical clearances for 400kV D/C Quad Teesta III HEP – Kishanganj Transmission Line in South Sikkim as per the scope given below and as per Conditions of Contract-Volume I & Technical Specifications-Volume II. POWERGRID is the consultant for the project and all Technical Specifications / sourcing of services materials are to be followed as per POWERGRID standard.

1. BRIEF SCOPE OF WORK

Scope of work includes but not limited to providing of all services necessary for the execution of Earth Cutting Works to maintain statutory electrical clearances for 400kV D/C Quad Teesta III HEP – Kishanganj Transmission Line inter-alia, including transportation, provide & transport all materials & other related works including disposal of excavated muck at suitable locations, insurance to your men, materials & equipment, insurance covering physical loss or damage to the Facilities or any third parties at the Site, occurring prior to Completion of the Facilities as indicated in conditions of contract and also put up detailed proposals for protection walls, required after Earth Cutting. However, construction of the protection walls will not be in the scope of the contractor

The tentative quantity of excavation at various locations is tabulated below:

Sl. No.	Span	Unit	Volume of Earth Cutting Required
1	90/0 – 91/0	Cu.m	1540
2	91/1 – 93/0	Cu.m	2250
3	102/0 – 104/0	Cu.m	475
4	110A/0 – 111/0	Cu.m	8300
5	112/0 – 113/0	Cu.m	690
6	140/1 – 140/2	Cu.m	60
7	144/0 – 144/1	Cu.m	800
	Total	Cu.m	14115

Schedule of Quantities are attached in Volume III - Bid Forms & Price Schedules. Quantities may vary based on actual requirement. Exact number of walls etc & quantity of the items necessary for the completion of the scope of work, shall be jointly finalized by the successful bidder and site in-charge of TPTL before commencement of construction works. JMC (Joint Measurement Certificate) for every month after execution of work is to be provided. TPTL reserve all rights to increase or decrease the quantity based on site requirements. This document will become an integral part of contract document while execution of contract agreement.

1. TECHNICAL SPECIFICATION:

Volume II, Technical Specifications (Sub – Package – Earth Cutting Works) of M/s Teestavalley Power Transmission Ltd. for 400 kV Teesta III HEP – Kishanganj Quad D/C Transmission Line would be applicable for this scope of work only.

2. CONDITIONS OF CONTRACT

The Works are to be executed as per attached Conditions of Contract.

3. COMPLETION SCHEDULE

Sub Package – Earth Cutting Works is to be completed within Five (5) months from the date of NOA.

4. TERMS OF PAYMENT :

The terms of payment will be as per the Conditions of Contract.

5. TAXES AND DUTIES:

All taxes and duties shall be as per Conditions of Contract.

6. ENCLOSURES:

- i) Volume I - Conditions of Contract.
- ii) Volume II - Technical Specifications.
- iii) Volume III - Bid Forms & Price Schedules.

7. SALE OF BIDDING DOCUMENTS, SUBMISSION OF BID & OPENING OF BID:

The complete Bidding Documents are available at TPTL's website <http://www.tvptl.com>. Interested bidders can download the Bidding Documents and commence preparation of bids to gain time. Interested Bidders will be required to purchase the Bidding Documents from TPTL (for submission of the bid). In such case, a complete set of Bidding Documents in English may be purchased by interested Bidder or Bidder's authorised representative on the submission of a written application to the address indicated in the Bid Data Sheet (BDS) and upon payment of a non refundable fee of Rs. 10,000/- in the form of demand draft in favour of Teestavalley Power Transmission Limited., payable at New Delhi on all working days up to 04.11.2017 between 1000 hours to 1800 hours. TPTL shall not be responsible for any postal delay in respect of request for issuance of Bidding Documents and/or despatch of Bidding Documents and/or submission of bids. All correspondence/communication including sale of Bidding Documents and submission of bids shall be made to Assistant Manager, Teestavalley Power Transmission Limited, 2nd Floor, Vijaya Building, Barakhamba Road, New Delhi – 110001. Telephone No.:- 011 - 46529740;

In case of any discrepancy between the documents downloaded by the prospective bidder and the Bidding Documents (hard copy) issued by TPTL official, the latter shall prevail.

Bids for Sub Package - Earth Cutting Works is to be submitted by 11-00 Hrs on 10.11.2017 along with Bid security amount of Rs 1,35,000 & bids would be opened at 11-30 hrs on 10.11.2017 as indicated in the Bid Data Sheet (BDS) of Conditions of Contract-Vol I.

SECTION - II

INSTRUCTION TO BIDDERS (ITB)

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INSTRUCTION TO BIDDERS (ITB)

This section (Section –II) of the Bidding Documents provides the information necessary for bidders to prepare responsive bids, in accordance with the requirements of the Employer. It also provides information on bid submission, opening and evaluation, and on contract award. This Section (Section II) contains provisions that are to be used unchanged unless Section III, which consists of provisions that supplement, amend, or specify in detail, information or requirements included in Section II and that are specific to each procurement, states otherwise. If there is a conflict between the provisions of Section – II & Section – III, the provisions of Section – III shall prevail.

However, provisions governing the performance of the Contractor, payments under the contract or matters affecting the risks, rights and obligations of the parties under the contract are not included in this section but instead under Section – IV: General Conditions of Contract and/or Section – V: Special Conditions of Contract.

Further in all matters arising out of the provisions of this Section – II and the Section – III of the Bidding Documents, the laws of the Union of India shall be the governing laws and courts of New Delhi shall have exclusive jurisdiction.

A. Introduction

1. Source of Funds

- 1.1 The Owner named in the **BDS** intends to use domestic funding (Owner's Internal Resources/Domestic Borrowings/Bonds) for this Project. All eligible payments under the contract for the packages for which this Invitation for Bids is issued shall be made by the Employer named in the **BDS**.

2. Eligible Bidders

- 2.1 This Invitation for Bids, issued by the Employer is open to all firms including company(ies), Government owned Enterprises registered and incorporated in India as per Companies Act, 1956, barring Government Department as well as foreign bidders/MNCs not registered and incorporated in India and those bidders with whom business is banned by the Employer.

3. Eligible Plant, Equipment, and Services

- 3.1 For the purposes of these Bidding Documents, the words "facilities," "plant and equipment," "installation services," etc., shall be construed in accordance with the respective definitions given to them in the General Conditions of Contract.
- 3.2 All plant and equipment to be supplied and installed and services carried out under the contract shall have their origin in any country barring those countries against whom sanction for conducting business is imposed by Government of India and barring those firms with whom business is banned by the Employer.
- 3.3 For purposes of this clause, "origin" means the place where the plant and equipment or component parts thereof are mined, grown, or produced. Plant and equipment are produced when, through manufacturing, processing or substantial and major assembling of components, a commercially recognized product results that is substantially different in basic characteristics or in purpose or utility from its components.
- 3.4 The origin of the plant, equipment, and services is distinct from the nationality of the Bidder.

4. Cost of Bidding

- 4.1 The Bidder shall bear all costs associated with the preparation and submission of its bid including post-bid discussions, technical and other presentations etc., and

the Employer will in no case be responsible or liable for these costs, regardless of the conduct or outcome of the bidding process.

B. The Bidding Documents

5. Content of Bidding Documents

- 5.1 The facilities required, bidding procedures, contract terms and technical requirements are prescribed in the Bidding Documents. The Bidding Documents comprise of the following and shall include amendments, if any, thereto:

VOLUME – I : Conditions of Contract

Section I IFB

Section II Instructions to Bidders (ITB)

Section III Bid Data Sheet (BDS)

Section IV General Conditions of Contract (GCC)

Section V Special Conditions of Contract (SCC)

Section VI Sample Forms and Procedures (FP)

1. Bid Form & Price Schedule
 - 1.1 Bid Form
 - 1.2 Price Schedule
2. Bid Security Form
3. Form of Notification by the Employer to the Bank
4. Form of 'Notification of Award of Contract'
- 4(a) (Deleted)
- 4(b) Form of 'Notification of Award of Contract' for Installation of Plant and equipment
5. Form of Contract Agreement
 - 5.1 Appendix-1: Terms and Procedures of Payment
 - 5.2 Appendix-2: Price Adjustment
 - 5.3 Appendix-3: Insurance Requirements
 - 5.4 Appendix-4: Time Schedule
 - 5.5 Appendix-5: (Deleted)
 - 5.6 Appendix-6: Scope of Works and Supply by the Employer
 - 5.7 Appendix-7: List of Document for Approval or Review
 - 5.8 Appendix-8(a): Guarantees, Liquidated Damages for Non-Performance
Appendix-8(b): Functional Guarantees
 - 5.9 Appendix-9: Contract Co-ordination Procedure
 - 5.10 Appendix-10: Break-up of Contract Price for On-Account Payment Purpose
6. Performance Security Form
7. Bank Guarantee Form for Advance Payment

8. Form of Taking Over Certificate
9. Form of Indemnity Bond to be executed by the Contractor for the Equipment handed over in one lot by TPTL for performance of its contract.
10. Form of Indemnity Bond to be executed by the Contractor for the Equipment handed over in installments by TPTL for performance of its contract.
11. Form of Authorisation Letter
12. Form of Trust Receipt for Plant, Equipment and Materials received
13. Form of Extension of bank guarantee
14. (Deleted)
15. (Deleted)
16. Format for Evidence of Access to or Availability of Credit/Facilities
17. Form of Operational Acceptance

Volume-II : Technical Specification

Volume-III : Bid Form & Price Schedules

- 5.2 The Bidder is expected to examine all instructions, forms, terms, specifications and other information in the Bidding Documents. Failure to furnish all information required by the Bidding Documents or submission of a bid not substantially responsive to the Bidding Documents in every respect will be at the Bidder's risk and may result in rejection of its bid.
- 5.3 Scope of Work is given in Volume-II of Bidding Documents titled "Technical Specifications".

6. Clarification of Bidding Documents

- 6.1 A prospective Bidder requiring any clarification of the Bidding Documents may notify the Employer in writing or by cable (hereinafter, the term cable is deemed to include Electronic Data Interchange (EDI) or telefax) at the Employer's mailing address indicated in the **BDS**. Similarly, if a Bidder feels that any important provision in the documents, such as those listed in ITB Sub-Clause 22.4.1, will be unacceptable, such an issue should be raised as above. The Employer will respond in writing to any request for clarification or modification of the Bidding Documents that it receives no later than twenty-eight (28) days prior to the original deadline for submission of bids prescribed by the Employer. The Employer shall not be obliged to respond to any request for clarification received later than the above period. Further, the mere request for clarification from the Bidders shall not be a ground for seeking extension in the deadline for

submission of bids. Written copies of the Employer's response (including an explanation of the query but not identification of its source) will be sent to all prospective bidders that have received the Bidding Documents.

- 6.2 The Bidder is advised to visit and examine the site where the facilities are to be installed and its surroundings and obtain for itself on its own responsibility and cost all information that may be necessary for preparing the bid and entering into a contract for supply and installation of the facilities. The costs of visiting the site shall be at the Bidder's own expense.
- 6.3 The Bidder and any of its personnel or agents will be granted permission by the Employer to enter upon its premises and lands for the purpose of such inspection, but only upon the express condition that the Bidder, its personnel and agents will release and indemnify the Employer and its personnel and agents from and against all liability in respect thereof and will be responsible for death or personal injury, loss of or damage to property and any other loss, damage, costs and expenses incurred as a result of the inspection.
- 6.4 The Bidder's designated representative(s) is/are invited to attend a pre-bid meeting, which, if convened, will take place at the venue and time stipulated in the **BDS**. The purpose of the meeting will be to clarify any issues regarding the Bidding Documents in general and the Technical Specifications in particular. The Bidder is requested, as far as possible, to submit any question in writing, to reach the Employer not later than one week before the meeting. It may not be practicable at the meeting to answer questions received late, but questions and responses will be transmitted as indicated hereafter. Minutes of the meeting, including the text of the questions raised (without identifying name of the bidders) and the responses given, together with any responses prepared after the meeting, will be transmitted without delay to all purchasers of the Bidding Documents. Any modification of the Bidding Documents listed in ITB Sub-Clause 5.1, which may become necessary as a result of the pre-bid meeting shall be made by the Employer exclusively through the issue of an Addendum pursuant to ITB Clause 7 and not through the minutes of the pre-bid meeting.

Non-attendance at the pre-bid meeting will not be a cause for disqualification of a bidder.

7. Amendment of Bidding Documents

- 7.1 At any time prior to the deadline for submission of bids, the Employer may, for any reason, whether at its own initiative, or in response to a clarification requested by a prospective Bidder, amend the Bidding Documents.

- 7.2 The amendment will be notified in writing or by cable to all prospective bidders who have purchased the Bidding Documents and will be binding on them. Bidders are required to immediately acknowledge receipt of any such amendment, and it will be assumed that the information contained therein will have been taken into account by the Bidder in its bid.
- 7.3 In order to afford reasonable time to the prospective Bidders to take the amendment into account in preparing their bid, the Employer may, at its discretion, extend the deadline for the submission of bids, in such cases, the Employer will notify all bidders in writing of the extended deadline.

C. Preparation of Bids

8. Language of Bid

- 8.1 The bid prepared by the Bidder and all correspondence and documents exchanged by the Bidder and the Employer related to the bid shall be written in the English language, provided that any printed literature furnished by the Bidder may be written in another language, as long as such literature is accompanied by English translation of its pertinent passages, in which case, for purposes of interpretation of the bid, the English translation shall govern.

9. Documents Comprising the Bid

- 9.1 The bid submitted by the Bidder shall comprise of the following documents:
- (a) Bid Form duly completed and signed by the Bidder, together with all Attachments (available in Volume-III). All Attachments have been identified in ITB Sub-Clause 9.3 below.
 - (b) Price Schedules (available in Volume-III) duly completed by the Bidder.
 - (c) Technical Data Sheets (available in Volume-III), if any, duly completed by the Bidder.
- 9.2 Bidders shall note that, if permitted according to the **BDS**, they are entitled to submit an alternative bid within the scope specified in the **BDS**. In such cases, bidders shall submit full details and justifications, etc., in Attachment 7 to the bid as indicated in ITB Sub-Clause 9.3 (g) below.

9.3 Each Bidder shall submit with its bid the following attachments:

(a) Attachment 1: Bid Security

A bid security furnished in accordance with ITB Clause 13.

(b) Attachment 2: Power of Attorney

A power of attorney, duly notarized, indicating that the person(s) signing the bid has(ve) the authority to sign the bid and thus that the bid is binding upon the Bidder during full period of its validity, in accordance with ITB Clause 14.

(c) Attachment 3: Bidder's Eligibility and Qualifications

In the absence of prequalification, documentary evidence establishing that the Bidder is eligible to bid in accordance with ITB Clause 2 and is qualified to perform the contract in accordance with Annexure – A (BDS), if its bid is accepted.

The documentary evidence of the Bidder's eligibility to bid shall establish to the Employer's satisfaction that the Bidder, at the time of submission of its bid, is eligible as defined in ITB Clause 2.

The documentary evidence of the Bidder's qualifications to perform the contract, if its bid is accepted, shall establish to the Employer's satisfaction that the Bidder has the financial, technical, production, procurement, shipping, installation and other capabilities necessary to perform the contract, and, in particular, meets the experience and other criteria outlined in the Qualification Requirement for the Bidders in Annexure – A (BDS).

As per Annexure – A (BDS), the bid can be submitted by an individual firm (joint venture is not allowed)

(d) Attachment 4: Eligibility and Conformity of the Facilities

Documentary evidence established in accordance with ITB Clause 3 that the facilities offered by the Bidder in its bid or in any alternative bid (if permitted pursuant to ITB Sub-Clause 9.2) are eligible and conform to the Bidding Documents.

The documentary evidence of the eligibility of the facilities shall consist of a statement on the country of origin of the plant and equipment offered, which shall be confirmed by a certificate of origin issued at the time of shipment.

The documentary evidence of the conformity of the facilities to the Bidding Documents may be in the form of literature, drawings and data, and shall furnish:

- (i) a detailed description of the essential technical and performance characteristics of the facilities;
- (ii) a list giving full particulars, including available sources, of all spare parts, special tools, etc., necessary for the proper and continuing functioning of the facilities for a period of Fifteen (15) years following completion of facilities in accordance with provisions of contract; and
- (iii) a commentary on the Employer's Technical Specifications and adequate evidence demonstrating the substantial responsiveness of the facilities to those specifications. Bidders shall note that standards for workmanship, materials and equipment designated by the Employer in the Bidding Documents are intended to be descriptive (establishing standards of quality and performance) only and not restrictive. The Bidder may substitute alternative standards, brand names and/or catalog numbers in its bid, provided that it demonstrates to the Employer's satisfaction that the substitutions are substantially equivalent or superior to the standards designated in the Technical Specifications.
- (iv) All details regarding after sale service support offered.
- (v) All details regarding proposed training for Employer's personnel.
- (vi) Detailed answers to all the Questions in the Questionnaire , if prescribed in the Bidding Document.
- (vii) Details establishing the responsiveness of the offer in accordance with Technical Specification, Volume-II.

(e) Attachment 5: **(Not in use)**

(f) Attachment 6: Deviations

In order to facilitate evaluation of bids, deviations, if any, from the terms and conditions or Technical Specifications shall be listed in Attachment 6 to the bid. The Bidder may also provide the additional price, for withdrawal of the deviations. However, the attention of the bidders is drawn to the provisions of ITB Sub-Clause 22.4 regarding the rejection of bids that are not substantially responsive to the requirements of the Bidding Documents.

Bidders attention is also drawn to the provisions of ITB Sub-Clause 22.4.1.

(g) Attachment 7: Alternative Bids

- (i) Bid with alternative time schedule is not acceptable.
- (ii) Except as provided under subparagraph (iii) below, bidders wishing to offer technical alternatives to the requirements of the Bidding Documents must first price the Employer's design of the facilities as described in the Bidding Documents, and shall further provide all information necessary for a complete evaluation of the alternatives by the Employer, including drawings, design calculations, technical specifications, breakdown of prices, proposed installation methodology and other relevant details. Only the technical alternatives, if any, of the lowest evaluated Bidder conforming to the basic technical requirements shall be considered by the Employer.
- (iii) When bidders are permitted pursuant to ITB Sub-Clause 9.2 to submit alternative technical solutions for specified parts of the facilities, such parts shall be described in Technical Specifications and Drawings. Technical alternatives that comply with the performance and technical criteria specified for the facilities shall be considered by the Employer on their own merits, pursuant to ITB Sub-Clause 24.2.

(h) Attachment 8: Manufacturer's Authorisation Form **(Not in use)**

(i) Attachment 9: Work Completion Schedule.

(j) Attachment 10: Guarantee Declaration.

(k) Attachment 11: Information regarding ex-employees of Employer in Bidder's firm.

(l) Attachment 12: Price Adjustment Data

(m) Attachment 13: Declaration regarding Social Accountability

(n) Attachment 14: Integrity Pact **(Not in use)**

(o) Attachment 15: Information for E-payment, PF details and declaration regarding Micro/Small & Medium Enterprises

(p) Attachment 16: Additional Information

- (i) Certificate from their Banker(s) (as per prescribed formats in Form 16, Section-VI: Sample Forms and Procedures) indicating various fund based/non fund based limits sanctioned to the Bidder and the extent of utilization as on date. Such certificate should have been issued not earlier than three months prior to the date of bid opening. Wherever necessary the Employer may make queries with the Bidders' Bankers.
- (ii) Detailed information on any litigation or arbitration arising out of contracts completed or under execution by it over the last five years. A consistent history of awards involving litigation against the Bidder may result in rejection of Bid.
- (iii) Any other information which the Bidder intends to furnish.

10. Bid Form and Price Schedules

- 10.1 The Bidder shall complete the Bid Form and the appropriate Price Schedules furnished in the Bidding Documents as indicated therein, following the requirements of ITB Clauses 11 and 12.

11. Bid Prices

- 11.1 Unless otherwise specified in the Technical Specifications, bidders shall quote for the entire facilities on a "single responsibility" basis such that the total bid price covers all the Contractor's obligations mentioned in or to be reasonably inferred from the Bidding Documents in respect of the design, manufacture, including procurement and subcontracting (if any), delivery for construction, installation and completion of the facilities including supply of mandatory spares (if any). This includes all requirements under the Contractor's responsibilities for testing, pre-commissioning and commissioning of the facilities and, where so required by the Bidding Documents, the acquisition of all permits, approvals and licenses, etc.; the operation, maintenance and training services and such other items and services as may be specified in the Bidding Documents, all in accordance with the requirements of the General Conditions of Contract. Items against which no price is entered by the Bidder will not be paid for by the Employer when executed and shall be deemed to be covered by the prices for other items.
- 11.2 Bidders are required to quote the price for the commercial, contractual and technical obligations outlined in the Bidding Documents. If a Bidder wishes to make a deviation, such deviation shall be listed in Attachment 6 of its bid. The Bidder may also provide the additional price, if any, for withdrawal of the deviations.

11.3 Bidders shall give a breakdown of the prices in the manner and detail called for in the Price Schedules. Where no Price Schedules are included in the Bidding Documents, Bidders shall present their prices in the following manner:

Separate numbered Schedules shall be used for each of the following elements. The total amount from each Schedule 1 to 5 shall be summarized in a grand

summary of Price Proposal (Schedule 6) giving the total bid price(s) to be entered in the Bid Form.

Schedule 1	(Deleted)
Schedule 2	(Deleted)
Schedule 3	Installation Services
Schedule 4	(Deleted)
Schedule 5	(Deleted)
Schedule 6	Grand Summary (Schedule Nos. 1 to 5)
Schedule 7	(Deleted)

Bidders shall note that the plant and equipment included in Schedule No. 1 above exclude materials used for civil, building and other construction works. All such materials shall be included and priced under Schedule No. 3, Installation Services.

11.3.1 The bid price for (i) the items for which quantities have been indicated as lumpsum or lot or set and/or (ii) where the quantities are to be estimated by the Bidder shall remain constant unless there is change made in the Scope of Work by Employer. The quantities and unit prices (i) subsequently arrived while approving the Bill of Quantities (BOQ) /Billing breakup of lumpsum quantities/lot/Set and/or (ii) estimated by the bidder shall be for on account payment purpose only. In case additional quantities, over and above the quantities BOQ/billing breakup and /or estimated by the bidder, are required for successful completion of the scope of work as per Technical Specification, the Bidder shall execute additional quantities of these items for which no additional payment shall be made over and above the lumpsum bid price. In case quantities of these items supplied at site are in excess of that required for successful completion of scope of work, such additional quantities shall be the property of the bidders and they shall be allowed to take back the same from the site for

which no deduction from the lumpsum bid price shall be made. Further, in case actual requirement of quantities for successful completion of scope of work is less than the quantities identified in the approved BOQ /billing breakup and/or estimated by the bidder, the lumpsum bid price shall remain unchanged and no deduction shall be made from the lumpsum price due to such reduction of quantities.

- 11.3.2 It shall be the responsibility of the bidders to pay all statutory taxes, duties and levies to the concerned authorities for such surplus material, which would otherwise have been, lawfully payable. The bidders shall submit an indemnity bond to keep Employer harmless from any liability, before release of such material to the bidder by Employer.
- 11.3.3 Set/Lot/Lumpsum shall be governed as per the requirement of the corresponding item description read in conjunction with relevant provisions of Technical Specifications.
- 11.4 In the schedules, Bidder shall give the required details and a break down of their price as follows:
- (a) **(Deleted)**
 - (b) **(Deleted)**
 - (c) Installation Charges shall be quoted separately (Schedule 3) and shall include rates and prices for all labour, Contractor's equipment, temporary works, materials, consumables and all matters and things of whatsoever nature, provision of operations and maintenance manuals, etc. wherever identified in the Bidding Documents as necessary for the proper execution of all installation services.
 - (d) **(Deleted)**
 - (e) The bidder shall include the all taxes such as GST etc. as applicable in their quoted bid price and Employer would not bear any liability on this account. Employer on behalf of the Owner shall, however, deduct such taxes at source as per the rules and issue Tax Deducted at Source (TDS) Certificate to the bidder.

11.4.1 Discount(s)/rebate(s) offered by the bidder shall be indicated as a percentage of price component(s). Bidder shall also indicate in his bid, the price component(s) on which the discount is to be applied.

11.5 The prices shall be in accordance with the following:

Adjustable Price: Prices quoted by the Bidder shall be subject to adjustment during performance of the contract to reflect changes in the cost elements such as labor, material, etc. in accordance with the procedures specified in the corresponding Appendix – 2 to the Form of Contract Agreement. A bid submitted with a fixed price quotation will not be rejected, but the price adjustment will be treated as zero. The price adjustment provision will not be taken into consideration in bid evaluation. Bidders are required to indicate the source of labour & materials indices in Attachment 12.

12. Bid Currencies

12.1 Prices shall be quoted in Indian Rupees Only.

13. Bid Security

13.1 The Bidder shall furnish, as part of its bid, a bid security in the amount and currency as stipulated in the **BDS**. The bid security must be submitted in the form provided in the Bidding Documents.

13.2 The bid security shall, at the bidder's option, be in the form of a crossed bank draft/pay orders/banks certified cheque in favour of Employer as stipulated in **BDS** from State Bank of India (SBI) or any commercial bank or a bank guarantee from State Bank of India (SBI) or any commercial bank selected by the bidder and located in India. The format of the bank guarantee shall be in accordance with the form of bid security included in the Bidding Documents. Bid security shall remain valid for a period of thirty (30) days beyond the original bid validity period, and beyond any extension subsequently requested under ITB Sub-Clause 14.2.

13.3 Any bid not accompanied by an acceptable bid security shall be rejected by the Employer and shall be returned unopened.

- 13.4 The bid securities of unsuccessful bidders will be returned as promptly as possible, but not later than twenty-eight (28) days after the expiration of the bid validity period.
- 13.5 The successful Bidder shall be required to keep its bid security valid for a sufficient period till the performance security(ies) pursuant to ITB Clause 33 are furnished to the satisfaction of the Employer. The bid security of the successful Bidder will be returned when the Bidder has signed the Contract Agreement, pursuant to ITB Clause 32, and has furnished the required performance security, pursuant to ITB Clause 33.
- 13.6 The bid security may be forfeited
- (a) if the Bidder withdraws its bid during the period of bid validity specified by the Bidder in the Bid Form; or
 - (b) In case the Bidder does not withdraw the deviations proposed by him, if any, at the cost of withdrawal stated by him in the bid; or
 - (c) If a Bidder does not accept the corrections to arithmetical errors identified during preliminary evaluation of his bid pursuant to ITB Sub-Clause 22.2; or
 - (d) If, as per the requirement of Qualification Requirements the Bidder is required to submit a Deed of Joint Undertaking and he fails to submit the same, duly attested by Notary Public of the place(s) of the respective executant(s) or registered with the Indian Embassy/High Commission in that Country, within ten days from the date of intimation of post – bid discussion; or
 - (e) in the case of a successful Bidder, if the Bidder fails within the specified time limit
 - (i) to sign the Contract Agreement, in accordance with ITB Clause 32, or
 - (ii) to furnish the required performance security(ies), in accordance with ITB Clause 33 and/or to keep the bid security valid as per the requirement of ITB Sub-Clause 13.5.
- 13.7 No interest shall be payable by the Employer on the above Bid Security.

14. Period of Validity of Bid

- 14.1 Bids shall remain valid for the period of six months after the date of opening of bids prescribed by the Employer, pursuant to ITB Sub-Clause 17.1. A bid valid for a shorter period shall be rejected by the Employer as being nonresponsive.
- 14.2 In exceptional circumstance, the Employer may solicit the Bidder's consent to an extension of the bid validity period. The request and responses thereto shall be made in writing or by cable. If a Bidder accepts to prolong the period of validity, the bid security shall also be suitably extended. A Bidder may refuse the request without forfeiting its bid security. A Bidder granting the request will not be required or permitted to modify its bid.

15. Format and Signing of Bid

- 15.1 The Bidder shall prepare an original and four number of copies of the bid, clearly marking each one as "Original Bid", "Copy No. 1", "Copy No. 2", "Copy No. 3", "Copy No. 4" as appropriate. In the event of any discrepancy between them, the original shall govern.
- 15.2 The original and all the copies of the bid, each consisting of the documents listed in ITB Clause 9, shall be typed or written in indelible ink and shall be signed by the Bidder or a person or persons duly authorized to bind the Bidder to the contract. The latter authorization shall be indicated by written power of attorney accompanying the bid and submitted as Attachment 2 to the Bid under ITB Sub-Clause 9.3. All pages of the bid, except for unamended printed literature, shall be initialed by the person or persons signing the bid.
- 15.3 The bid shall contain no alterations, omissions or additions, unless such corrections are initialed by the person or persons signing the bid.
- 15.4 The Bidder shall furnish information as described in the last paragraph of the Form of Bid on commissions or gratuities, if any, paid or to be paid to agents relating to this bid, and to contract execution if the Bidder is awarded the contract.

D. Submission of Bids

16. Sealing and Marking of Bids

- 16.1 The Bidder shall seal the original and each copy of the bid in separate envelopes, duly marking the envelopes as "Original Bid" and "Copy No. [number]". The envelopes shall then be sealed in an outer envelope.

16.2 The inner and outer envelopes shall

- (a) be addressed to the Employer at the address given in the **BDS**, and
- (b) bear the contract name indicated in the **BDS**, the Invitation for Bids title and number indicated in the BDS, and the statement "Do Not Open Before [date]," to be completed with the time and date specified in the **BDS**, pursuant to ITB Sub-Clause 20.1.

16.3 Bid guarantees in original shall be submitted in a separate envelope on which the contents shall be superscribed.

The Bid Forms and Price Schedules shall be enclosed in separate envelope on which the contents shall be superscribed.

The inner envelopes shall also indicate the name and address of the Bidder so that the bid can be returned unopened in case it is declared "late."

16.4 If the outer envelope is not sealed and marked as required by ITB Sub-Clause 16.2 above, the Employer will assume no responsibility for the bid's misplacement or premature opening. If the outer envelope discloses the Bidder's identity, the Employer will not guarantee the anonymity of the bid submission, but this disclosure will not constitute grounds for bid rejection.

17. Deadline for Submission of Bids

17.1 Bids must be received by the Employer at the address specified under ITB Sub-Clause 16.2 no later than the time and date stated in the **BDS**. In the event of the specified date for the submission of bids being declared a holiday for the Employer, the bids will be received upto the appointed time on the next working day. Bids once received by the Employer shall not be returned except otherwise provided in the Bidding Documents.

17.2 The Employer may, at its discretion, extend this deadline for submission of bids by amending the Bidding Documents in accordance with ITB Sub-Clause 7.3 for the reasons specified therein at any time prior to opening of bids by the Employer pursuant to ITB Clause 20, in which case all rights and obligations of Employer and bidders will thereafter be subject to the deadline as extended.

18. Late Bids

- 18.1 Any bid received by the Employer after the bid submission deadline prescribed by the Employer, pursuant to ITB Clause 17, will be rejected and returned unopened to the Bidder.

19. Modification and Withdrawal of Bids

- 19.1 The Bidder may modify or withdraw its bid after submission, provided that modification or written notice of withdrawal is received by the Employer prior to the deadline prescribed for bid submission.
- 19.2 The Bidder's modifications shall be prepared, sealed, marked and dispatched as follows:
- (a) The Bidders shall provide an original and copies of any modifications to its bid, clearly identified as such, in two inner envelopes duly marked "Bid Modifications—Original" and "Bid Modifications—Copies." The inner envelopes shall be sealed in an outer envelope, which shall be duly marked "Bid Modifications."
 - (b) Other provisions concerning the marking and dispatch of bid modifications shall be in accordance with ITB Sub-Clauses 16.2, 16.3 and 16.4.
- 19.3 A Bidder wishing to withdraw its bid shall notify the Employer in writing prior to the deadline prescribed for bid submission. The notice of withdrawal shall
- (a) be addressed to the Employer at the address named in the **BDS**, and
 - (b) bear the contract name, the IFB number, and the words "Bid Withdrawal Notice." Bid withdrawal notices received after the bid submission deadline will be ignored, and the submitted bid will be deemed to be a validly submitted bid.
- 19.4 No bid may be withdrawn in the interval between the bid submission deadline and the expiration of the bid validity period specified in ITB Clause 14. Withdrawal of a bid during this interval may result in the Bidder's forfeiture of its bid security, pursuant to ITB Sub-Clause 13.6.

E. Bid Opening and Evaluation

20. Opening of Bids by Employer

- 20.1 The Employer will open the bids in public, including withdrawals and modifications made pursuant to ITB Clause 19, in the presence of bidders' designated representatives who choose to attend, at the time, date, and location stipulated in the **BDS**. The bidders' representatives who are present shall sign a register evidencing their attendance. In the event of the specified date for the submission of bids being declared a holiday for the Employer, the bids will be received up to the appointed time on the next working day.
- 20.2 Envelopes marked "Withdrawal" shall be opened first and the name of the Bidder shall be read out. Bids for which an acceptable notice of withdrawal has been submitted pursuant to ITB Clause 19 shall be returned unopened.
- 20.3 For all other Bids, the bidders' names, the Bid Prices, including any alternative Bid Price or deviation, any discounts, the presence of bid security, and any such other details as the Employer may consider appropriate, will be announced by the Employer at the opening. Subsequently, all envelopes marked "Modification" shall be opened and the submissions therein read out in appropriate detail. No bid shall be rejected at bid opening except for late bids pursuant to ITB Clause 18 and bids not accompanied with bid security or the bid security is found to be prima facie unacceptable. Such bids shall be returned to the Bidder unopened. However, opening of bid accompanied with the bid security shall not be construed to imply its acceptability which shall be examined in detail pursuant to ITB Clause 22.
- 20.4 The Employer shall prepare minutes of the bid opening in the form of Bid Opening Statement, including the information disclosed to those present in accordance with ITB Sub-Clause 20.3. The prices and details as may be read out during the bid opening and recorded in the Bid Opening Statement would not be construed to determine the relative ranking amongst the Bidders, or the successful Bidder, and would not confer any right or claim whatsoever on any Bidder. The successful Bidder (also referred to as the L1 Bidder) shall be determined as per the provisions of this Section – II and considered for award of contract as provided in ITB Clause 29.
- 20.5 Bids not opened and read out at bid opening shall not be considered further for evaluation, irrespective of the circumstances and shall be returned to the Bidder unopened.

21. Clarification of Bids

- 21.1 During bid evaluation, the Employer may, at its discretion, ask the Bidder for a clarification of its bid. The request for clarification and the response shall be in writing, and no change in the price or substance of the bid shall be sought, offered or permitted.

22. Preliminary Examination of Bids

- 22.1 The Employer will examine the bids to determine whether they are complete, whether any computational errors have been made, whether required sureties have been furnished, whether the documents have been properly signed, and whether the bids are generally in order.
- 22.2 Arithmetical errors will be rectified on the following basis. If there is a discrepancy between the unit price and the total price, which is obtained by multiplying the unit price and quantity, or between subtotals and the total price, the unit or subtotal price shall prevail, and the total price shall be corrected. However, in case of items quoted without indicating any quantity or the items for which the quantities are to be estimated by the Bidder, the total price quoted against such items shall prevail. If there is a discrepancy between words and figures, the amount in words will prevail. The subtotal, total price or the total bid price, irrespective of the discrepancy between the amount indicated in words or figures shall be rectified in line with the procedure explained above. If the Bidder does not accept the correction of errors, its bid will be rejected and the amount of Bid Security forfeited.

The prices of all such item(s) against which the Bidder has not quoted rates/amount (viz., items left blank or against which '-' is indicated) in the Price Schedules will be deemed to have been included in other item(s).

If the discount(s)/rebate(s) offered by the Bidder is a percentage discount and the price component(s) on which the said discount is not indicated in the bid, the same shall be considered on the total bid price [i.e. proportionately on each price component], in the event of award. Further, Conditional discounts/rebates, if any, offered by the bidder shall not be taken into consideration for evaluation. It shall, however, be considered in case of award.

In respect of taxes, duties and other levies indicated by the Bidder in the Bid, which are reimbursable in line with the provisions of the Bidding Documents, the applicable rate and amount thereof shall be ascertained by the Employer based on which, if required, necessary rectification and arithmetical correction

shall be carried out by the Employer. The rate and amount so ascertained by the Employer shall prevail.

The Bidder should ensure that the prices furnished in various price schedules are consistent with each other. In case of any inconsistency in the prices furnished in the specified price schedules to be identified in Bid Form for this purpose, the Employer shall be entitled to consider the highest price for the purpose of evaluation and for the purpose of award of the Contract use the lowest of the prices in these schedules.

- 22.3 The Employer may waive any minor informality, nonconformity or irregularity in a bid that does not constitute a material deviation, whether or not identified by the Bidder in Attachment 6 to its bid, and that does not prejudice or affect the relative ranking of any Bidder as a result of the technical and commercial evaluation, pursuant to ITB Clauses 24 and 25.
- 22.4 Prior to the detailed evaluation, the Employer will determine whether each bid is of acceptable quality, is complete and is substantially responsive to the Bidding Documents. Any deviations, conditionality or reservation introduced in Attachment-6 and/or in the Bid Form, Price Schedules & Technical Data Sheets and covering letter, or in any other part of the bid will be reviewed to conduct a determination of the substantial responsiveness of the bidder's bid. For purposes of this determination, a substantially responsive bid is one that conforms to all the terms, conditions and specifications of the Bidding Documents without material deviations, objections, conditionalities or reservations. A material deviation, objection, conditionality or reservation is one (i) that affects in any substantial way the scope, quality or performance of the contract; (ii) that limits in any substantial way, inconsistent with the Bidding Documents, the Employer's rights or the successful Bidder's obligations under the contract; or (iii) whose rectification would unfairly affect the competitive position of other bidders who are presenting substantially responsive bids.
- 22.4.1 Bids containing deviations from critical provisions relating to GCC Clauses 2.14 (Governing Law), 8 (Terms of Payment), 9.3 (Performance Security), 10 (Taxes and duties), 21.2 (Completion Time Guarantee), 22 (Defect Liability), 23 (Functional Guarantee), 25 (Patent Indemnity), 26 (Limitation of Liability), 38 (Settlement of Disputes), 39 (Arbitration) and Appendix 2 to the Form of Contract Agreement (Price Adjustment) will be considered as non-responsive.
- 22.4.2 Regarding deviations, conditionality or reservations introduced in the bid, which will be reviewed to conduct a determination of substantial responsiveness of the Bidder's bid as stated in ITB Sub-Clause 22.4, the order of precedence of these

documents to address contradictions, if any, in the contents of the bid, shall be as follows:

- I. Covering Letter
- II. Bid Form
- III. Attachment-6 : Deviations
- IV. Price Schedule
- V. Any other part of the bid

Contents of the document at Sr. No. I above will have overriding precedence over other documents (Sr. No. II to V above). Similarly, contents of document at Sr. No. II above will have overriding precedence over other documents (Sr. No. III to V above), and so on.

- 22.5 If a bid is not substantially responsive, it will be rejected by the Employer, and may not subsequently be made responsive by the Bidder by correction of the nonconformity. The Employer's determination of a bid's responsiveness is to be based on the contents of the bid itself without recourse to extrinsic evidence.

23. Conversion to Single Currency

- 23.1 This shall not be applicable as domestic firms are required to quote the prices in Indian Rupees only.

24. Technical Evaluation

- 24.1 The Employer will carry out a detailed evaluation of the bids previously determined to be substantially responsive in order to determine whether the technical aspects are in accordance with the requirements set forth in the Bidding Documents. In order to reach such a determination, the Employer will examine and compare the technical aspects of the bids on the basis of the information supplied by the bidders, taking into account the following factors:

- (a) overall completeness and compliance with the Technical Specifications and Drawings; deviations from the Technical Specifications as identified in Attachment 6 to the bid and those deviations not so identified; suitability of the facilities offered in relation to the environmental and climatic conditions prevailing at the site; and quality, function and operation of any process control concept included in the bid. The bid that does not meet minimum acceptable standards of completeness, consistency and detail will be rejected for nonresponsiveness.

- (b) achievement of specified performance criteria by the facilities
- (c) type, quantity and long-term availability of mandatory and recommended spare parts and maintenance services
- (d) any other relevant factors, if any, listed in the **BDS**, or that the Employer deems necessary or prudent to take into consideration.

24.2 Where alternative technical solutions have been permitted and offered in Attachment 7 to the bid, the Employer will make a similar evaluation of the alternatives, which will be treated in the technical and commercial evaluations as if they were base bids. Where alternatives are not permitted, but have in any event been offered, they shall be ignored.

25. Commercial Evaluation

25.1 The comparison shall be on the total price in Price Schedule No. 6 Grand Summary (Total of Schedule Nos. 1 to 5)..

The comparison shall also include the applicable taxes, duties and other levies, which are reimbursable in line with the provisions of the Bidding Documents.

The Employer's comparison will also include the costs resulting from application of the evaluation procedures described in ITB Sub-Clause 25.2 & 25.3.

25.2 The Employer's evaluation of a bid will take into account, in addition to the bid prices indicated in Price Schedule Nos. 1 through 5, the following costs and factors that will be added to each Bidder's bid price in the evaluation using pricing information available to the Employer, in the manner and to the extent indicated in ITB Sub-Clause 25.3 and in the Technical Specifications:

- (a) the cost of all quantifiable deviations and omissions from the contractual and commercial conditions and the Technical Specifications as identified in Attachment 6 to the bid, and other deviations and omissions not so identified;
- (b) compliance with the time schedule called for in the corresponding Appendix to the Form of Contract Agreement and evidenced as needed in a milestone schedule provided in the bid;
- (c) the functional guarantees of the facilities offered;
- (d) the performance of the equipment offered;

- (i) Bidder shall state the guaranteed performance or efficiency of the Equipments, named in the **BDS**, in response to the Technical Specifications. Equipment offered shall have minimum performance specified in Technical Specification to be considered responsive. Bids offering Equipment with a performance less than the specified may be rejected.
- (ii) For the purpose of evaluation, the adjustment on the basis of per unit of differential loss in terms of Indian Rupees indicated in the **BDS** will be added to the bid price.

The best parameter of loss quoted at rated current for the equipment by any technically responsive bidder shall be taken as basis and that quoted by the particular bidder shall be used to arrive at differential price to be applied for the bid.

- (e) the extra cost of work, services, facilities, etc., required to be provided by the Employer or third parties;
- (f) any other relevant factors listed in **BDS**.

The estimated effect of the price adjustment provisions of the Conditions of Contract, applied over the period of execution of the contract, shall not be taken into account in bid evaluation.

25.3 Pursuant to ITB Sub-Clause 25.2, the following evaluation methods will be followed:

- (a) Contractual and commercial deviations

The evaluation shall be based on the evaluated cost of fulfilling the contract in compliance with all commercial, contractual and technical obligations under this Bidding Documents. In arriving at the evaluated cost, the price for withdrawal of deviations shown in Attachment 6 of the bid will be used, if necessary. If such a price is not given, the Employer will make its own assessment of the cost of such a deviation for the purpose of ensuring fair comparison of bids.

- (b) Time schedule (program of performance)

The plant and equipment covered by this bidding shall have the 'Taking Over' by the Employer after successful Completion within the period

specified in BDS. Bidders are required to base their prices on the time schedule given in Appendix 4 to the Form of Contract Agreement (Time Schedule) or, where no time schedule is given in Appendix 4, on the Completion date(s) given above. No credit will be given to earlier completion. Bids offering completion beyond the specified period will be rejected.

(c) Functional Guarantees of the facilities

- (i) Bidders shall state the functional guarantees (e.g., performance, efficiency, consumption) of the proposed facilities in response to the Technical Specifications. Plant and equipment offered shall have a minimum (or a maximum, as the case may be) level of functional guarantees specified in the Technical Specifications to be considered responsive. Bids offering plant and equipment with functional guarantees less (or more) than the minimum (or maximum) specified shall be rejected.
- (ii) For the purposes of evaluation, the adjustment specified in the Technical Specifications will be added to the bid price for each drop (or excess) in the responsive functional guarantees offered by the Bidder, below (or above) either a norm of one hundred (100) or the value committed in the responsive bid with the most performing functional guarantees, as specified in the Technical Specifications.

(d) Performance Guarantees of the Equipments

- (i) Bidder shall state the guaranteed performance or efficiency of the Equipments, named in the **BDS**, in response to the Technical Specifications. Equipment offered shall have a minimum (or a maximum, as the case may be) level of guarantees specified in the Technical Specifications to be considered responsive. Bids offering plant and equipment with guarantees less (or more) than the minimum (or maximum) specified shall be rejected.
- (ii) For the purposes of evaluation, the adjustment specified in the **BDS** will be added to the bid price for each drop (or excess) in the guarantees offered by the Bidder.

- (e) Work, services, facilities, etc., to be provided by the Employer

Where bids include the undertaking of work or the provision of services or facilities by the Employer in excess of the provisions allowed for in the Bidding Documents, the Employer shall assess the costs of such additional work, services and/or facilities during the duration of the contract. Such costs shall be added to the bid price for evaluation.

- 25.4 Any adjustments in price that result from the above procedures shall be added, for purposes of comparative evaluation only, to arrive at an "Evaluated Bid Price." Bid prices quoted by bidders and rectified as per ITB Sub Clause 22.2 shall remain unaltered.

26. Purchase/Domestic Preference

- 26.1 Purchase Preference as admissible under the policy of Government of India in vogue will be allowed to Central Public Sector Enterprises in evaluation and comparison of bids.

27. Contacting the Employer

- 27.1 From the time of bid opening to the time of contract award, if any Bidder wishes to contact the Employer on any matter related to its bid, it should do so in writing.
- 27.2 Any effort by a Bidder to influence the Employer in the Employer's bid evaluation, bid comparison or contract award decisions may result in rejection of the Bidder's bid. The Employer shall be the sole judge in this regard.

F. Award of Contract

28. Post-qualification

- 28.1 In the absence of prequalification, the Employer will determine to its satisfaction whether the Bidder selected as having submitted the lowest evaluated responsive bid is qualified, as per the Qualification Requirement specified in Annexure – A (BDS) to satisfactorily perform the contract. The employer shall be the sole judge in this regard and the Employer's interpretation of the Qualification Requirement shall be final and binding.
- 28.2 The determination will take into account the Bidder's financial, technical capabilities including production capabilities, in particular the Bidder's contract work in hand, future commitments & current litigation and past performance. It

will be based upon an examination of the documentary evidence of the Bidder's qualifications submitted by the Bidder in Attachment 3 to the bid, as well as such other information as the Employer deems necessary and appropriate.

28.3 An affirmative determination will be a prerequisite for award of the contract to the Bidder. A negative determination will result in rejection of the Bidder's bid, in which event the Employer will proceed to the next lowest evaluated bid to make a similar determination of that Bidder's capabilities to perform satisfactorily.

28.4 **(Deleted)**

29. Award Criteria

29.1 Subject to ITB Clause 30, the Employer will award the contract to the successful Bidder (also referred to as the L1 Bidder) whose bid has been determined to be substantially responsive and to be the lowest evaluated bid. This shall, however, be subject to assessment that may be carried out, if required, by the Employer as per the provisions of Bidding Documents. The Employer shall be the sole judge in this regard.

The Employer reserves the right to waive minor deviations if they do not materially affect the capacity and capability of the Bidder to perform the contract.

29.2 The Employer may request the Bidder to withdraw any of the deviations listed in Attachment 6 to the winning bid, at the price shown for the deviation in Attachment 6 to the bid.

At the time of Award of Contract, if so desired by the Employer, the bidder shall withdraw the deviations listed in Attachment 6 at the cost of withdrawal stated by him in the bid. In case the bidder does not withdraw the deviations proposed by him, if any, at the cost of withdrawal stated by him in the bid, his bid will be rejected and his bid security forfeited.

Bidder would be required to comply with all other requirements of the Bidding Documents except for those deviations which are accepted by the Employer.

29.3 The Employer reserves the right to vary the quantity of any of the spares and/or delete any items of spares altogether at the time of Award of Contract.

29.4 The mode of contracting with the successful bidder will be as per stipulation outlined in Clause GCC 2.1 and briefly indicated below:

29.4.1 The award shall be made as follows:

- (i) **(Deleted)**
- (ii) For providing all services i.e. port handling and custom clearance of imported goods and loading, inland transportation for delivery at site, insurance, unloading, storage, handling at site, installation, Testing and Commissioning including performance testing in respect of all the equipments supplied by the Employer, Training to be imparted (whether in India or abroad) and any other services specified in the Contract Documents.

30. Employer's Right to Accept any Bid and to Reject any or all Bids

30.1 The Employer reserves the right to accept or reject any bid, and to annul the bidding process and reject all bids at any time prior to award of contract, without thereby incurring any liability to the affected Bidder or bidders or any obligation to inform the affected Bidder or bidders of the grounds for the Employer's action.

31. Notification of Award

31.1 Prior to the expiration of the period of bid validity, the Employer will notify the successful Bidder in writing, that its bid has been accepted. The notification of award will constitute the formation of the contract.

31.2 Upon the successful Bidder's furnishing of the performance security pursuant to ITB Clause 33, the Employer will promptly discharge the bid securities, pursuant to ITB Sub-Clause 13.4 & 13.5.

32. Signing the Contract Agreement

32.1 At the same time as the Employer notifies the successful Bidder that its bid has been accepted, the Employer in consultation with the Bidder will prepare the Contract Agreement provided in the Bidding Documents, incorporating all agreements between the parties.

32.2 The Contract Agreement shall be prepared within twenty-eight (28) days of the Notification of Award and the successful Bidder and the Employer shall sign and date the Contract Agreement immediately thereafter.

33. Performance Security

- 33.1 Within twenty-eight (28) days after receipt of the notification of award, the successful Bidder shall furnish the performance security for 10% (Ten percent) of the contract price plus additional performance securities, if any, in line with the requirement of Qualification Requirements, in the amount given in the **BDS** and in the form provided in Section VII, Sample Forms and Procedures, of the Bidding Documents.
- 33.2 Failure of the successful Bidder to comply with the requirements of ITB Clause 32 or Clause 33 shall constitute sufficient grounds for the annulment of the award and forfeiture of the bid security, in which event the Employer may make the award to the next lowest evaluated Bidder or call for new bids.

34. Fraud and Corruption

It is the Employer's policy that requires the Bidders, suppliers and contractors and their subcontractors under the contracts to observe the highest standard of ethics during the procurement and execution of such contracts. In pursuance of this policy, the Employer:

- (a) defines, for the purpose of this provision, the terms set forth below as follows:
- (i) "corrupt practice" is the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;
 - (ii) "fraudulent practice" is any act or omission, including a misrepresentation, that knowingly or recklessly misleads or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;
 - (iii) "collusive practice" is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;
 - (iv) "coercive practice" is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;
 - (v) "obstructive practice" is
 - (aa) deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede a Employer's investigation

into allegations of a corrupt, fraudulent, coercive or collusive practice; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation;

or

- (bb) acts intended to materially impede the exercise of the Employer's inspection and audit rights.
- (b) will reject a proposal for award if it determines that the bidder recommended for award has, directly or through an agent, engaged in corrupt, fraudulent, collusive, coercive or obstructive practices in competing for the contract in question;
- (c) will sanction a firm or individual, including declaring ineligible, either indefinitely or for a stated period of time, to be awarded a contract if it at any time determines that the firm has, directly or through an agent, engaged in corrupt, fraudulent, collusive, coercive or obstructive practices in competing for, or in executing, a contract; and
- (d) will have the right to require that the provision be included in Bidding Documents and in contracts, requiring Bidders, suppliers, and contractors and their sub-contractors to permit the Employer to inspect their accounts and records and other documents relating to bid submission and contract performance and to have them audited by auditors appointed by the Employer.

----- End of Section-II (ITB) -----

SECTION - III

BID DATA SHEETS (BDS)

BID DATA SHEETS (BDS)

The following bid specific data for the Plant and Equipment to be procured shall amend and/or supplement the provisions in the Instructions to Bidders (ITB)

Sl. N	ITB Clause Ref. No.	Bid Data Details
1.	ITB 1.1	<p>The Owner is: Teestavalley Power Transmission Limited, Head Office: 2nd Floor, Vijaya Building, Barakhamba Road, New Delhi - 110001.</p> <p>Kind Attn. : Mr. Varun Dayal, Asst. Manager Telephone No.:-011-46529740</p>
2.	ITB 1.1	<p>The Employer is: Teestavalley Power Transmission Limited, Head Office: 2nd Floor, Vijaya Building, Barakhamba Road, New Delhi - 110001.</p> <p>Kind Attn. : Mr. Varun Dayal, Asst. Manager Telephone No.:-011-46529740</p>
4.	ITB 6.1	<p>Address of the Employer: Teestavalley Power Transmission Limited, Head Office: 2nd Floor, Vijaya Building, Barakhamba Road, New Delhi - 110001.</p> <p>Kind Attn. : Mr. Varun Dayal, Asst. Manager Telephone No.:-011-46529740</p>
9.	ITB 13.1	<p>Bidders are required to submit the bid security for the amount of Rs 1.35 Lakhs (Rs One Lakhs Thirty Five Thousand Rupees only), validity upto 6 months from the date of bid opening.</p>
10.	ITB 16.2(a), ITB 16.2(b), ITB 17.1, ITB 19.3	<p>Address for submission of Bids and its modification and withdrawal, if any;</p> <p>Address in Person or by Post:</p> <p>Kind Attn. : Mr. Varun Dayal, Asst. Manager</p>

SI. N	ITB Clause Ref. No.	Bid Data Details
	(a) and ITB 20.1	<p>Teestavalley Power Transmission Limited, Project Office: 2nd Floor, Vijaya Building, Barakhamba Road, New Delhi - 110001</p> <p>Deadline for submission of Bids and its modification and withdrawal, if any</p> <p>Upto 1100 hours on 10.11.2017</p> <p>Address for Bid Opening: Kind Attn. : Mr. Varun Dayal, Asst. Manager</p> <p>Teestavalley Power Transmission Limited, Project Office: 2nd Floor, Vijaya Building, Barakhamba Road, New Delhi - 110001.</p> <p>Time and date for Bid Opening: Date : 10.11.2017 Time: 1130 hours (Indian Standard Time)</p> <p>(a) Bid Title: (insert Name of the Package & Specification No.)</p> <p>(b) Do not open before 1130 hours on 10.11.2017</p>
15.	ITB 25.2 (c)	Deleted as Functional Guarantees are not applicable.
16.	ITB 25.2(d)	<p>Replace the existing provisions with the following:</p> <p>the performance of the equipments offered;</p> <p>Bidder shall confirm the guaranteed performance or efficiency of the Equipments in response to the Technical Specifications, if any.</p>
17.	ITB 25.3 (b)	The Time for Completion for Sub-Package Earth Cutting Works shall be 5(Five) months from the date of Notification of Award.
18.	ITB 25.3 (c)	Deleted as Functional Guarantees are not applicable.

SI. N	ITB Clause Ref. No.	Bid Data Details
19.	ITB 25.3 (d)	Replace the existing provisions with the following: Performance Guarantees of the Equipments; Bidder shall conform the guaranteed performance or efficiency of the Equipments in response to the Technical Specifications if any.
21.	ITB 26.1	Deleted

----- *End of Section-III (BDS)* -----

SECTION - IV

GENERAL CONDITIONS OF CONTRACT (GCC)

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GENERAL CONDITIONS OF CONTRACT (GCC)

Preamble

This Section (Section –IV) of the Bidding Documents [named as General Conditions of Contract (GCC)] provides all the rights and obligations of the parties under the Contract. This Section contains provisions that are to be used unchanged unless Section – V [named as Special Conditions of Contract (SCC)] states otherwise as any changes in GCC or any complementary information that may be needed has been shown in SCC. If there is a conflict between the provisions of Section – IV & Section – V, the provisions of Section – V shall prevail.

A. Definitions and Interpretation

1. Definitions

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

- (a) "Arbitrator" means the person or persons appointed by agreement between the Employer and the Contractor to make a decision on or to settle any dispute or difference between the Employer and the Contractor referred to him or her by the parties pursuant to GCC Sub-Clause 39.1 (Arbitration) hereof.
- (b) "Associate" means a party who has been conjoined by the Contractor to independently execute a pre-selected part of facilities of the contract and grant him the associated contractual rights and obligations, without diluting the overall responsibility of the contractor in respect of the Facilities under the contract.
- (c) "Collaborator" or "Parent Company" means the firms/corporations who has provided technological support to the manufacturer for establishing production line for the specific Equipment.
- (d) "Commissioning" means operation of the Facilities or any part thereof, if any, as per GCC Sub-Clause 1.1(e) by the Contractor as specified in the Technical Specifications, which operation is to be carried out by the Contractor as provided in GCC Sub-Clause 20.1.3 (Commissioning), for the purpose of Trial – Operation (GCC Sub-Clause 20.1.4).
- (e) "Completion" means that the Facilities (or a specific part thereof where specific parts are specified in the **SCC**) have been completed operationally and structurally and put in a tight and clean condition and that all works in respect of pre-commissioning of the Facilities (or a specific part thereof where specific parts are specified in the **SCC**) has been completed (wherever required, as per Technical Specifications) and Commissioning followed by Trail – Operation has been completed, as provided in GCC Sub-Clause 20.1 (Completion of Facilities) hereof.
- (f) "Contract" means the Contract Agreement entered into between the Employer and the Contractor together with the Contract Documents referred to therein.

- (g) "Contract Documents" means the documents listed in Clause 1.1 of Article 1 (Contract Documents) of the Form of Contract Agreement (including any amendments thereto).
- (h) "Contract Price" means the sum specified in Clause 2.1 of Article 2 (Contract Price) of the Contract Agreement, subject to such additions or deductions therefrom, as may be made pursuant to the Contract. For the purpose of Liquidated Damages and Contract Performance Guarantee, the "Contract Price" means the sum specified in Clause 2.1 of Article 2 (Contract Price) of the Contract Agreement.
- (i) "Contractor" means the firms whose bid to perform the Contract has been accepted by the Employer and is named in the Contract Agreement, and includes the legal successors or permitted assigns of the Contractor.
- (j) "Contractor's Equipment" means all plant, facilities, equipment, machinery, tools, apparatus, appliances or things of every kind required in or for installation, completion and maintenance of Facilities that are to be provided by the Contractor, but does not include Plant and Equipment, or other things intended to form or forming part of the Facilities.
- (k) "Contractor's Representative" means any person nominated by the Contractor and approved by the Employer in the manner provided in GCC Sub-Clause 13.2 (Contractor's Representative and Construction Manager) hereof to perform the duties delegated by the Contractor.
- (l) "Day" means calendar day of the Gregorian Calendar.
- (m) "Defect Liability Period" means the period of validity of the warranties given by the Contractor commencing at Completion of the Facilities or a part thereof, if any, as per GCC Sub-Clause 1.1(e), during which the Contractor is responsible for defects with respect to the Facilities (or the relevant part thereof) as provided in GCC Clause 22 (Defect Liability) hereof.
- (n) "Effective Date" means the date of Notification of Award from which the Time for Completion shall be determined.
- (o) "Employer" means the firm/corporation/ government entity, named in the **SCC**, who is responsible for getting the Facilities implemented. The Employer may be Owner himself or an agency appointed by the Owner

and shall include the legal successors or permitted assigns of the Employer.

- (p) "Facilities" means the Plant and Equipment to be supplied and installed, as well as all the Installation Services to be carried out by the Contractor under the Contract.
- (q) "GCC" means the General Conditions of Contract hereof.
- (r) "Guarantee Test(s)" means the test(s) specified in the Technical Specifications to be carried out to ascertain whether the Facilities or a specified part thereof is able to attain the Functional Guarantees specified in the Technical Specifications in accordance with the provisions of GCC Sub-Clause 20.2.1 (Guarantee Test) hereof during/after successful Commissioning followed by Trial - Operation.
- (s) "Installation Services" means all those services ancillary to the supply of the Plant and Equipment for the Facilities, to be provided by the Contractor under the Contract; e.g., transportation and provision of marine or other similar insurance, inspection, expediting, site preparation works (including the provision and use of Contractor's Equipment and the supply of all construction materials required), installation, testing, precommissioning, commissioning, operations, maintenance, the provision of operations and maintenance manuals, training, etc.
- (t) "Month" means calendar month of the Gregorian Calendar.
- (u) "Notification of Award" means the official notice issued by the Employer notifying the Contractor that his bid has been accepted.
- (v) "Operational Acceptance" means the acceptance by the Employer of the Facilities (or any part of the Facilities where the Contract provides for acceptance of the Facilities in parts), which certifies the Contractor's fulfillment of the Contract in respect of Functional Guarantees of the Facilities (or the relevant part thereof) in accordance with the provisions of GCC Sub-Clause 20.2.2 (Operational Acceptance) hereof after successful Commissioning followed by Trial - Operation.
- (w) "Owner" means the firm/corporation/government entity, named in the SCC, who has decided to set up the Facilities and shall include the legal successors or permitted assigns of the Owner.

- (x) "Plant and Equipment" means permanent plant, equipment, machinery, apparatus, articles and things of all kinds to be provided and incorporated in the Facilities by the Contractor under the Contract (including the spare parts to be supplied by the Contractor under GCC Sub-Clause 3.3 hereof), but does not include Contractor's Equipment.
- (y) "Precommissioning" means the testing, checking and other requirements specified in the Technical Specifications that are to be carried out by the Contractor in preparation for Commissioning as provided in GCC Sub-Clause 20.1.2 (Pre-Commissioning) hereof.
- (z) "Project Manager" means the person appointed by the Employer in the manner provided in GCC Sub-Clause 13.1 hereof to perform the duties delegated by the Employer.
- (aa) "SCC" means the Special Conditions of Contract.
- (bb) "Site" means the land and other places upon which the Facilities are to be installed, and such other land or places as may be specified in the Contract as forming part of the Site.
- (cc) "Subcontractor"/"vendor"/"sub-vendor" means firms/corporations/government entities to whom execution of any part of the Facilities, including preparation of any design or supply of any Plant and Equipment, is sub-contracted directly or indirectly by the Contractor with the consent of the Employer in writing, and includes its legal successors or permitted assigns.
- (dd) "Taking Over" means the Employer's written acceptance of the Facilities under the Contract, after successful Trial – Operation for the specified period in accordance with the Contract, as provided in GCC Sub-Clause 20.1.5.
- (ee) "Time for Completion" means the time within which Completion of the Facilities is to be attained in accordance with the specifications, as a whole (or of a part of the Facilities where a separate Time for Completion of such part has been prescribed in the **SCC**) and "Taking Over" by the Employer is to be attained.

2. Interpretation

2.1 Contract

The Contracts to be entered into with the successful Bidder shall be as defined in **SCC**.

2.2 Contract Documents

All documents forming part of the Contract (and all parts thereof) are intended to be correlative, complementary and mutually explanatory, subject to Article 1.2 (Order of Precedence) of the Contract Agreement. The Contract shall be read as a whole.

2.3 Language

The ruling language of the Contract and the language for communications shall be English.

2.4 Singular and Plural

The singular shall include the plural and the plural the singular, except where the context otherwise requires.

2.5 Headings

The headings and marginal notes in the General Conditions of Contract are included for ease of reference, and shall neither constitute a part of the Contract nor affect its interpretation.

2.6 Entire Agreement

Subject to GCC Sub-Clause 12.4 hereof, the Contract constitutes the entire agreement between the Employer and Contractor with respect to the subject matter of Contract and supersedes all communications, negotiations and agreements (whether written or oral) of parties with respect thereto made prior to the date of Contract.

2.7 Amendment

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

2.8 Independent Contractor

The Contractor shall be an independent contractor performing the Contract. The Contract does not create any agency, partnership, joint venture or other joint relationship between the parties hereto.

Subject to the provisions of the Contract, the Contractor shall be solely responsible for the manner in which the Contract is performed. All employees, representatives or Subcontractors engaged by the Contractor in connection with the performance of the Contract shall be under the complete control of the Contractor and shall not be deemed to be employees of the Employer, and nothing contained in the Contract or in any subcontract awarded by the Contractor shall be construed to create any contractual relationship between any such employees, representatives or Subcontractors and the Employer.

2.9 Joint Venture

If the Contractor is a joint venture of two or more firms, all such firms shall be jointly and severally bound to the Employer for the fulfillment of the provisions of the Contract and shall designate one of such firms to act as a leader with authority to bind the joint venture. The composition or the constitution of the joint venture shall not be altered without the prior written consent of the Employer.

2.10 Non-Waiver

2.10.1 Subject to GCC Sub-Clause 2.10.2 below, no relaxation, forbearance, delay or indulgence by either party in enforcing any of the terms and conditions of the Contract or the granting of time by either party to the other shall prejudice, affect or restrict the rights of that party under the Contract, nor shall any waiver by either party of any breach of Contract operate as waiver of any subsequent or continuing breach of Contract.

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

2.11 Severability

If any provision or condition of the Contract is prohibited or rendered invalid or unenforceable, such prohibition, invalidity or unenforceability shall not

affect the validity or enforceability of any other provisions and conditions of the Contract.

2.12 Country of Origin

“Origin” means the place where the materials, equipment and other supplies for the Facilities are mined, grown, produced or manufactured, and from which the services are provided. Plant and equipment are produced when, through manufacturing, processing or substantial and major assembling of components, a commercially recognized product results that is substantially different in basic characteristics or in purpose or utility from its components.

2.13 Notices

2.13.1 Unless otherwise stated in the Contract, all notices to be given under the Contract shall be in writing, and shall be sent by personal delivery, special courier, telegraph, facsimile or Electronic Data Interchange (EDI) to the address of the relevant party set out in the Contract Agreement, with the following provisions:

- (a) Any notice sent by telegraph, facsimile or EDI shall be confirmed within two (2) days after dispatch by notice sent by special courier, except as otherwise specified in the Contract.
- (b) Any notice sent by special courier shall be deemed (in the absence of evidence of earlier receipt) to have been delivered ten (10) days after dispatch. In proving the fact of dispatch, it shall be sufficient to show that the envelope containing such notice was properly addressed, stamped and conveyed to the postal authorities or courier service for transmission by special courier. Provided further that whenever the postal authorities or courier service provide a proof of delivery, the same shall also be applicable for presenting the fact of dispatch.
- (c) Any notice delivered personally or sent by telegraph, facsimile or EDI shall be deemed to have been delivered on date of its dispatch.
- (d) Either party may change its postal, facsimile or EDI address or addressee for receipt of such notices by ten (10) days' notice to the other party in writing.

2.13.2 Notices shall be deemed to include any approvals, consents, instructions, orders and certificates to be given under the Contract.

2.14 Governing Law & its Jurisdiction

The Contract shall be governed by and interpreted in accordance with laws of Union of India and the Courts of New Delhi shall have exclusive jurisdiction in all matters arising under this Contract.

B. Subject Matter of Contract

3. Scope of Facilities

- 3.1 Unless otherwise expressly limited in the Technical Specifications, the Contractor's obligation shall include the provision of all Plant and Equipment and the performance of all Installation Services required for the design, the manufacture (including procurement, quality assurance, construction, installation, associated civil works, Precommissioning and delivery) of the Plant and Equipment and the installation, completion, commissioning and performance testing of the facilities in accordance with the plans, procedures, specifications, drawings, codes and any other documents as specified in the Technical specifications. Such specifications include, but are not limited to, the provision of supervision and engineering services; the supply of labour, materials, equipment, spare parts (as specified in GCC Sub-Clause 3.3 below) and accessories; Contractor's Equipment; construction utilities and supplies; temporary materials, structures and facilities; transportation (including without limitation, custom clearance, port handling, unloading and hauling to, from and at the Site); storage and training except for those supplies, works and services that will be provided or performed by the Employer, as set forth in Appendix-6 (Scope of Works and Supply by the Employer) to the Contract Agreement.
- 3.2 The Contractor shall, unless specifically excluded in the Contract, perform all such work and/or supply all such items and materials not specifically mentioned in the Contract but that can be reasonably inferred from the Contract as being required for attaining Completion of the Facilities as if such work and/or items and materials were expressly mentioned in the Contract.
- 3.3 The supply of Mandatory Spare Parts, if any, shall be included in the Contract. Beside the aforesaid Mandatory Spares parts, the Contractor shall ensure the availability of spare parts required for the operation and maintenance of the Facilities to the Employer for a minimum period of 15 years from Completion of the Facilities. The Contractor shall carry sufficient inventories to ensure an ex-stock supply of consumable spares for the plant and equipment. If so desired by the Employer, the Contractor shall submit the specifications, price and the terms and conditions relating to the supply

thereof for such spares identified by the Employer with validity period of 6 months within 30 days of receipt of request from Employer for its consideration and placement of order.

3.4 The Contractor shall guarantee that in the event of termination of production of spare parts by the Contractor or his Sub-Contractor:

(i) The Contractor shall send advance notification to the Employer of the pending termination, with 2 (two) years time to permit the Employer to procure needed requirements, and

(ii) Following such termination, the Contractor shall furnish at no cost to the Employer the blueprints, drawings and specification of the spare parts, if requested.

3.5 In case the Contractor fails to supply the spares parts in accordance with the terms stipulated above, the Employer shall sanction the Contractor declaring them ineligible for a stated period of time for future projects.

4. Time for Commencement and Completion

4.1 The Contractor shall commence work on the Facilities from the Effective Date of Contract and without prejudice to GCC Sub-Clause 21.2 hereof, the Contractor shall thereafter proceed with the Facilities in accordance with the time schedule specified in the corresponding Appendix – 4 (Time Schedule) to the Contract Agreement.

4.2 The Contractor shall attain Completion of the Facilities (or of a part where a separate time for Completion of such part is specified in the Contract) within the time stated under Time for Completion or within such extended time to which the Contractor shall be entitled under GCC Clause 34 hereof.

5. Contractor's Responsibilities

5.1 The Contractor shall design, manufacture (including associated purchases and/or subcontracting), install and complete the Facilities with due care and diligence in accordance with the Contract.

5.2 The Contractor confirms that it has entered into this Contract on the basis of a proper examination of the data relating to the Facilities (including any data as to boring tests) provided by the Employer, and on the basis of information that the Contractor could have obtained from a visual inspection of the Site (if access thereto was available) and of other data readily available to it relating

to the Facilities as of the date twenty-eight (28) days prior to bid submission. The Contractor acknowledges that any failure to acquaint itself with all such data and information shall not relieve its responsibility for properly estimating the difficulty or cost of successfully performing the Facilities.

- 5.3 The Contractor shall acquire in its name all permits, approvals and/or licenses from all local, state or national government authorities or public service undertakings in the country where the Site is located that are necessary for the performance of the Contract, including, without limitation, visas for the Contractor's and Subcontractor's personnel and entry permits for all imported Contractor's Equipment. The Contractor shall acquire all other permits, approvals and/or licenses that are not the responsibility of the Employer under GCC Sub-Clause 6.3 hereof and that are necessary for the performance of the Contract.
- 5.4 The Contractor shall comply with all laws in force in India. The laws will include all local, state, national or other laws that affect the performance of the Contract and bind upon the Contractor. The Contractor shall indemnify and hold harmless the Employer from and against any and all liabilities, damages, claims, fines, penalties and expenses of whatever nature arising or resulting from the violation of such laws by the Contractor or its personnel, including the Subcontractors and their personnel, but without prejudice to GCC Sub-Clause 6.1 hereof.
- 5.5 Any Plant, Material and Services that will be incorporated in or be required for the Facilities and other supplies shall have their origin as specified under GCC Sub-Clause 2.12 (Country of Origin).
- 5.6 The Contractor shall permit the Employer to inspect the Contractor's accounts and records relating to the performance of the Contractor.

6. Employer's Responsibilities

- 6.1 The Employer shall ensure the accuracy of all information and/or data to be supplied by the Employer as described in the corresponding Appendix - 6 (Scope of Works and Supply by the Employer) to the Contract, except when otherwise expressly stated in the Contract.
- 6.2 The Employer shall be responsible for acquiring and providing legal and physical possession of the Site and access thereto, and for providing possession of and access to all other areas reasonably required for the proper execution of the Contract, including all requisite rights of way, as specified in the corresponding Appendix - 6 (Scope of Works and Supply by the

Employer) to the Contract Agreement. The Employer shall give full possession of and accord all rights of access thereto on or before the date(s) specified in that Appendix.

- 6.3 The Employer shall acquire and pay for all permits, approvals and/or licenses from all local, state or national government authorities or public service undertakings in the country where the Site is located which such authorities or undertakings require the Employer to obtain them in the Employer's name, are necessary for the execution of the Contract (they include those required for the performance by both the Contractor and the Employer of their respective obligations under the Contract), including those specified in Appendix 6 (Scope of Works and Supply by the Employer) to the Contract Agreement.
- 6.4 If requested by the Contractor, the Employer shall use its best endeavors to assist the Contractor in obtaining in a timely and expeditious manner all permits, approvals and/or licenses necessary for the execution of the Contract from all local, state or national government authorities or public service undertakings that such authorities or undertakings require the Contractor or Subcontractors or the personnel of the Contractor or Subcontractors, as the case may be, to obtain.
- 6.5 Unless otherwise specified in the Contract or agreed upon by the Employer and the Contractor, the Employer shall provide sufficient, properly qualified operating and maintenance personnel; shall supply and make available all raw materials, utilities, lubricants, chemicals, catalysts, other materials and facilities; and shall perform all work and services of whatsoever nature, to enable the Contractor to properly carry out Commissioning, all in accordance with the provisions of Appendix 6 (Scope of Works and Supply by the Employer) to the Contract Agreement at or before the time specified in the program furnished by the Contractor under GCC Sub-Clause 14.2 (Program of Performance) hereof and in the manner thereupon specified or as otherwise agreed upon by the Employer and the Contractor.
- 6.6 The Employer shall be responsible for the continued operation of the Facilities after Taking Over, in accordance with GCC Sub-Clause 20.1.5.
- 6.7 All costs and expenses involved in the performance of the obligations under this GCC Clause 6 shall be the responsibility of the Employer.

C. Payment

7. Contract Price

- 7.1 The Contract Price shall be as specified in Article 2 (Contract Price and Terms of Payment) of the Form of Contract Agreement.
- 7.2 The Contract Price shall be subject to adjustment in accordance with the provisions of Appendix 2 (Price Adjustment) to the Contract Agreement. The Contract Price shall be increased or reduced on account of variation in quantity in accordance with Clause 33 of GCC.
- 7.3 Subject to GCC Sub-Clauses 5.2 and 6.1 hereof, the Contractor shall be deemed to have satisfied itself as to the correctness and sufficiency of the Contract Price, which shall, except as otherwise provided for in the Contract, cover all its obligations under the Contract.

8. Terms of Payment

- 8.1 The Contract Price shall be paid as specified in the corresponding Appendix - 1 (Terms and Procedures of Payment) to the Contract Agreement. The procedures to be followed in making application for and processing payments shall be those outlined in the same Appendix.
- 8.2 All payments under the Contract shall be made in Indian Rupees.

9. Securities

9.1 Issuance of Securities

The Contractor shall provide the securities specified below in favor of the Employer at the times, and in the amount, manner and form specified below.

9.2 Advance Payment Security

- 9.2.1 The Contractor shall, within twenty-eight (28) days of the notification of contract award, provide a security in an amount equal to the advance payment calculated in accordance with the corresponding Appendix - 1 (Terms and Procedures of Payment) to the Contract Agreement, and in the same currency(ies) with initial validity of up to ninety (90) days beyond the date of Completion of the Facilities in accordance with GCC Sub-Clause 20.1. The same shall be extended by the Contractor time to time till ninety (90)

days beyond the actual date of Completion of the Facilities, as may be required under the Contract.

9.2.2 The security shall be in the Form of unconditional Bank Guarantee attached hereto in Section VI - Sample Forms and Procedures. The security shall be discharged after completion of the facilities or relevant part thereof.

- Procedure for effective reduction in the Advance Payment Security

The Advance Payment Security shall be allowed to be reduced every six (06) months after First Running Account Bill/Stage payment under the Contract if the validity of the Bank Guarantee is more than one year. The cumulative amount of reduction at any point of time shall not exceed seventy five percent (75%) of the advance corresponding to cumulative value of the Facilities completed as per a certificate to be issued by the Project Manager. It should be clearly understood that reduction in the value of advance Bank Guarantee shall not in any way dilute the Contractor's responsibility and liabilities under the Contract including in respect of the Facilities for which reduction in the value of security is allowed.

9.3 Performance Security

9.3.1 The Contractor shall, within twenty-eight (28) days of the notification of award, provide a performance security for the due performance of the Contract in the amount equivalent to Ten percent (10%) of the Contract Price, with a validity upto ninety (90) days beyond the Defect Liability Period. The same shall be extended by the Contractor time to time till ninety (90) days beyond the actual Defect Liability Period, as may be required under the Contract.

Apart from the Contractor's performance security, the Contractor shall be required to arrange additional performance securities, as specified in **SCC**, within twenty-eight (28) days of the notification of award in favour of the Employer in the form acceptable to the Employer.

9.3.2 The performance security shall be in the Form of unconditional Bank Guarantee attached hereto in the Section VI - Sample Forms and Procedures.

9.3.3 Reduction in the security pro rata to the Contract Price of any part of the Facilities is not admissible. However, if the Defects Liability Period has been extended on any part of the Facilities pursuant to GCC Sub-Clause 22.8 hereof, the Contractor shall issue an additional security in an amount proportionate to the Contract Price of that part. The security shall be returned

to the Contractor immediately after its expiration, provided, however, that if the Contractor pursuant to GCC Sub-Clause 22, is liable for an extended warranty obligation, the performance security shall be reduced to ten percent (10%) of the value of the component covered by the extended warranty.

9.3.4 In case of award of the contract to a Joint Venture, the Bank Guarantees for performance security and the Bank Guarantee for advance payment shall be submitted in the name of all the partner(s) of the Joint Venture

9.4 Issuing Banks

The Bank Guarantee for Advance Payment Security and Performance Security are to be provided by the Contractor, which should be issued either :

- (a) by a Public Sector Bank located in India, or
- (b) a scheduled Indian Bank having paid up capital (net of any accumulated losses) of Rs. 1,000 Million or above (the latest annual report of the Bank should support compliance of capital adequacy ratio requirement), or
- (c) by a foreign bank or a subsidiary of a foreign bank, located in India with overall international corporate rating or rating of long term debt not less than A- (A minus) or equivalent by a reputed rating agency.

9.5 Indemnity

9.5.1 For the equipment/material to be provided by the Contractor, it will be the responsibility of the Contractor to take delivery, unload and store the materials at Site and execute an Indemnity Bond and obtain authorisation letter from Employer as per proforma enclosed at Section VI (Sample Forms and Procedures), in favour of the Employer against loss, damage and any risks involved for the full value of the materials. This Indemnity Bond shall be furnished by the Contractor before commencement of the supplies and shall be valid till the scheduled date of Taking Over of the equipment by the Employer.

9.5.2 In case of divisible Contracts, where the Employer hands over his equipment to the Contractor for executing the Contract, then the Contractor shall, at the time of taking delivery of the equipment through Bill of Lading or other despatch documents, furnish trust Receipt for Plant, Equipment and Materials and also execute an Indemnity Bond in favour of the Employer in the form acceptable to the Employer for keeping the equipment in safe custody and to utilize the same exclusively for the purpose of the said

Contract. Samples of proforma for the Trust receipt and Indemnity Bond are enclosed under Section VI (Sample Forms and Procedures). The Employer shall also issue a separate Authorization Letter to the Contractor to enable him to take physical delivery of plant, equipment and materials from the Employer as per proforma enclosed under Section VI (Sample Forms and Procedures).

10. Taxes and Duties

10.1 Employer would not bear any liability on account of any tax such as GST etc. Employer shall, however, deduct such tax at source as per the rules and issue necessary Certificate to the Contractor.

D. Intellectual Property

11. Copy Right

11.1 The copyright in all drawings, documents and other materials containing data and information furnished to the Employer by the Contractor herein shall remain vested in the Contractor or, if they are furnished to the Employer directly or through the Contractor by any third party, including supplies of materials, the copyright in such materials shall remain vested in such third party.

The Employer shall however be free to reproduce all drawings, documents and other material furnished to the Employer for the purpose of the Contract including, if required, for operation and maintenance.

11.2 The copyright in all drawings, documents and other materials containing data and information furnished to the Contractor by the Employer herein shall remain vested in the Employer.

12. Confidential Information

12.1 The Employer and the Contractor shall keep confidential and shall not, without the written consent of the other party hereto, divulge to any third party any documents, data or other information furnished directly or indirectly by the other party hereto in connection with the Contract, whether such information has been furnished prior to, during or following termination of the Contract. Notwithstanding the above, the Contractor may furnish to its Subcontractor(s) such documents, data and other information it receives from the Employer to the extent required for the Subcontractor(s) to

perform its work under the Contract, in which event the Contractor shall obtain from such Subcontractor(s) an undertaking of confidentiality similar to that imposed on the Contractor under this GCC Clause 12.

- 12.2 The Employer shall not use such documents, data and other information received from the Contractor for any purpose other than the operation and maintenance of the Facilities. Similarly, the Contractor shall not use such documents, data and other information received from the Employer for any purpose other than the design, procurement of Plant and Equipment, construction or such other work and services as are required for the performance of the Contract.
- 12.3 The obligation of a party under GCC Sub-Clauses 12.1 and 12.2 above, however, shall not apply to that information which
- (a) now or hereafter enters the public domain through no fault of that party
 - (b) can be proven to have been possessed by that party at the time of disclosure and which was not previously obtained, directly or indirectly, from the other party hereto
 - (c) otherwise lawfully becomes available to that party from a third party that has no obligation of confidentiality.
- 12.4 The above provisions of this GCC Clause 12 shall not in any way modify any undertaking of confidentiality given by either of the parties hereto prior to the date of the Contract in respect of the Facilities or any part thereof.
- 12.5 The provisions of this GCC Clause 12 shall survive termination, for whatever reason, of the Contract.

E. Execution of the Facilities

13. Representatives

- 13.1 If the Project Manager is not named in the Contract, then within fourteen (14) days of the Effective Date, the Employer shall appoint and notify the Contractor in writing of the name of the Project Manager. The Employer may from time to time appoint some other person as the project Manager in place of the person previously so appointed, and shall give a notice of the name of such other person to the Contractor without delay. The Employer shall take

all reasonable care to see that no such appointment is made at such a time or in such a manner as to impede the progress of work on the Facilities. The Project Manager shall represent and act for the Employer at all times during the currency of the Contract. All notices, instructions, orders, certificates, approvals and all other communications under the Contract shall be given by the Project Manager, except as herein otherwise provided.

All notices, instructions, information and other communications given by the Contractor to the Employer under the Contract shall be given to the Project Manager, except as herein otherwise provided.

13.2 Contractor's Representative & Construction Manager

13.2.1 If the Contractor's Representative is not named in the Contract, then within fourteen (14) days of the Effective Date, the Contractor shall appoint the Contractor's Representative and shall request the Employer in writing to approve the person so appointed. If the Employer makes no objection to the appointment within fourteen (14) days, the Contractor's Representative shall be deemed to have been approved. If the Employer objects to the appointment within fourteen (14) days giving the reason therefor, then the Contractor shall appoint a replacement within fourteen (14) days of such objection, and the foregoing provisions of this GCC Sub-Clause 13.2.1 shall apply thereto.

13.2.2 The Contractor's Representative shall represent and act for the Contractor at all times during the currency of the Contract and shall give to the Project Manager all the Contractor's notices, instructions, information and all other communications under the Contract. All notices, instructions, information and all other communications given by the Employer or the Project Manager to the Contractor under the Contract shall be given to the Contractor's Representative or, in its absence, its deputy, except as herein otherwise provided. The Contractor shall not revoke the appointment of the Contractor's Representative without the Employer's prior written consent, which shall not be unreasonably withheld. If the Employer consents thereto, the Contractor shall appoint some other person as the Contractor's Representative, pursuant to the procedure set out in GCC Sub-Clause 13.2.1.

13.2.3 The Contractor's Representative may, subject to the approval of the Employer (which shall not be unreasonably withheld), at any time delegate to any person any of the powers, functions and authorities vested in him or her. Any such delegation may be revoked at any time. Any such delegation or revocation shall be subject to a prior notice signed by the Contractor's Representative, and shall specify the powers, functions and authorities

thereby delegated or revoked. No such delegation or revocation shall take effect unless and until a copy thereof has been delivered to the Employer and the Project Manager. Any act or exercise by any person of powers, functions and authorities so delegated to him or her in accordance with this GCC Sub-Clause 13.2.3 shall be deemed to be an act or exercise by the Contractor's Representative.

13.2.3.1 Notwithstanding anything stated in GCC Sub-Clause 13.1 and 13.2.1 above, for the purpose of execution of Contract, the Employer and the Contractor shall finalize and agree to a Contract Co-ordination Procedure and all the communication under the Contract shall be in accordance with such Contract Coordination Procedure.

13.2.4 From the commencement of installation of the Facilities at the Site until Operational Acceptance, the Contractor's Representative shall appoint a suitable person as the construction manager, (hereinafter referred to as "the Construction Manager"). The Construction Manager shall supervise all work done at the Site by the Contractor and shall be present at the Site through-out normal working hours except when on leave, sick or absent for reasons connected with the proper performance of the Contract. Whenever the Construction Manager is absent from the Site, a suitable person shall be appointed to act as his or her deputy.

13.2.5 The Employer may by notice to the Contractor object to any representative or person employed by the Contractor in the execution of the Contract who, in the reasonable opinion of the Employer, may behave inappropriately, may be incompetent or negligent, or may commit a serious breach of the Site regulations provided under GCC Sub-Clause 18.3. The Employer shall provide evidence of the same, whereupon the Contractor shall remove such person from the Facilities.

13.2.6 If any representative or person employed by the Contractor is removed in accordance with GCC Sub-Clause 13.2.5, the Contractor shall, where required, promptly appoint a replacement.

14. Work Program

14.1 Contractor's Organization

The Contractor shall supply to the Employer and the Project Manager a chart showing the proposed organization to be established by the Contractor for carrying out work on the Facilities. The chart shall include the identities of the key personnel together with the curricula vitae of such key personnel to be

employed within twenty-one (21) days of the Effective Date. The Contractor shall promptly inform the Employer and the Project Manager in writing of any revision or alteration of such an organization chart.

14.2 Program of Performance

Within twenty-eight (28) days after the date of Notification of Award, the Contractor shall prepare and submit to the Project Manager a detailed program of performance of the Contract (L2 Network) in the form of the Critical Path Method (CPM), the PERT network, or other internationally used programs and showing the sequence in which it proposes to design, manufacture, transport, assemble, install and pre-commissioning the Facilities, as well as the date by which the Contractor reasonably requires that the Employer shall have fulfilled its obligations under the Contract so as to enable the Contractor to execute the Contract in accordance with the program and to achieve Completion, Commissioning and Acceptance of the Facilities in accordance with the Contract. The program so submitted by the Contractor shall accord with the Time Schedule included in Appendix-4 (Time Schedule) to the Contract Agreement and any other dates and periods specified in the Contract. The Contractor shall update and revise the program as and when appropriate or when required by the Project Manager, but without modification in the Times for Completion under GCC Sub-Clause 4.2 and any extension granted in accordance with GCC Clause 34, and shall submit all such revisions to the Project Manager.

14.3 Progress Report

The Contractor shall monitor progress of all the activities specified in the program referred to in GCC Sub-Clause 14.2 above, and supply a progress report to the Project Manager every month.

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

14.4 Progress of Performance

If at any time the Contractor's actual progress falls behind the program referred to in GCC Sub-Clause 14.2, or it becomes apparent that it will so fall behind, the Contractor shall, at the request of the Employer or the Project Manager, prepare and submit to the Project Manager a revised program,

taking into account the prevailing circumstances, and shall notify the Project Manager of the steps being taken to expedite progress so as to attain Completion of the Facilities within the Time for Completion under GCC Sub-Clause 4.2, any extension thereof entitled under GCC Sub-Clause 34.1, or any extended period as may otherwise be agreed upon between the Employer and the Contractor.

14.5 Work Procedures

The Contract shall be executed in accordance with the Contract Documents and the procedures given in the section on Sample Forms and Procedures of the Contract Documents.

The Contractor may execute the Contract in accordance with its own standard project execution plans and procedures to the extent that they do not conflict with the provisions contained in the Contract.

15. Subcontracting

15.1 The corresponding Appendix (List of Approved Subcontractors) to the Contract Agreement specifies major items of supply or services and a list of approved Subcontractors against each item, including vendors. Insofar as no Subcontractors are listed against any such item, the Contractor shall prepare a list of Subcontractors for such item for inclusion in such list. The Contractor may from time to time propose any addition to or deletion from any such list. The Contractor shall submit any such list or any modification thereto to the Employer for its approval in sufficient time so as not to impede the progress of work on the Facilities. Such approval by the Employer for any of the Subcontractors shall not relieve the Contractor from any of its obligations, duties or responsibilities under the Contract.

15.2 The Contractor shall select and employ its Subcontractors for such major items from those listed in the lists referred to in GCC Sub-Clause 15.1.

15.3 For items or parts of the Facilities not specified in the corresponding Appendix (List of Approved Subcontractors) to the Contract Agreement, the Contractor may employ such Subcontractors as it may select, at its discretion.

16. Design and Engineering

16.1 Specifications and Drawings

- 16.1.1 The Contractor shall execute the basic and detailed design and the engineering work in compliance with the provisions of the Contract, or where not so specified, in accordance with good engineering practice.

The Contractor shall be responsible for any discrepancies, errors or omissions in the specifications, drawings and other technical documents that it has prepared, whether such specifications, drawings and other documents have been approved by the Project Manager or not, provided that such discrepancies, errors or omissions are not because of inaccurate information furnished in writing to the Contractor by or on behalf of the Employer.

- 16.1.2 The Contractor shall be entitled to disclaim responsibility for any design, data, drawing, specification or other document, or any modification thereof provided or designated by or on behalf of the Employer, by giving a notice of such disclaimer to the Project Manager.

16.2 Codes and Standards

Wherever references are made in the Contract to codes and standards in accordance with which the Contract shall be executed, the edition or the revised version of such codes and standards current at the date twenty-eight (28) days prior to date of bid submission shall apply unless otherwise specified. During Contract execution, any changes in such codes and standards shall be applied after approval by the Employer and shall be treated in accordance with GCC Clause 33.

16.3 Approval/Review of Technical Documents by Project Manager

- 16.3.1 The Contractor shall prepare (or cause its Subcontractors to prepare) and furnish to the Project Manager the documents listed in Appendix-7 (List of Documents for Approval or Review) to the Contract Agreement for its approval or review as specified and as in accordance with the requirements of GCC Sub-Clause 14.2 (Program of Performance).

Any part of the Facilities covered by or related to the documents to be approved by the Project Manager shall be executed only after the Project Manager's approval thereof.

GCC Sub-Clauses 16.3.2 through 16.3.7 shall apply to those documents requiring the Project Manager's approval, but not to those furnished to the Project Manager for its review only.

- 16.3.2 Within twenty one (21) days after receipt by the Project Manager of any document requiring the Project Manager's approval in accordance with GCC Sub-Clause 16.3.1, the Project Manager shall either return one copy thereof to the Contractor with its approval endorsed thereon or shall notify the Contractor in writing of its disapproval thereof and the reasons therefor and the modifications that the Project Manager proposes.
- 16.3.3 The Project Manager shall not disapprove any document, except on the grounds that the document does not comply with some specified provision of the Contract or that it is contrary to good engineering practice.
- 16.3.4 If the Project Manager disapproves the document, the Contractor shall modify the document and resubmit it for the Project Manager's approval in accordance with GCC Sub-Clause 16.3.2. If the Project Manager approves the document subject to modification(s), the Contractor shall make the required modification(s), and upon resubmission with the required modifications the document shall be deemed to have been approved.

The procedure for submission of the documents by the Contractor and their approval by the Project Manager shall be discussed and finalized with the Contractor.

- 16.3.5 If any dispute or difference occurs between the Employer and the Contractor in connection with or arising out of the disapproval by the Project Manager of any document and/or any modification(s) thereto that cannot be settled between the parties within a reasonable period, then such dispute or difference may be referred to an Arbitrator for determination in accordance with GCC Sub-Clause 39 hereof. If such dispute or difference is referred to an Arbitrator, the Project Manager shall give instructions as to whether and if so, how, performance of the Contract is to proceed. The Contractor shall proceed with the Contract in accordance with the Project Manager's instructions, provided that if the Arbitrator upholds the Contractor's view on the dispute and if the Employer has not given notice under GCC Sub-Clause 39 hereof, then the Contractor shall be reimbursed by the Employer for any additional costs incurred by reason of such instructions and shall be relieved of such responsibility or liability in connection with the dispute and the execution of the instructions as the Arbitrator shall decide, and the Time for Completion shall be extended accordingly.
- 16.3.6 The Project Manager's approval, with or without modification of the document furnished by the Contractor, shall not relieve the Contractor of any responsibility or liability imposed upon it by any provisions of the Contract

except to the extent that any subsequent failure results from modifications required by the Project Manager.

- 16.3.7 The Contractor shall not depart from any approved document unless the Contractor has first submitted to the Project Manager an amended document and obtained the Project Manager's approval thereof, pursuant to the provisions of this GCC Sub-Clause 16.3. If the Project Manager requests any change in any already approved document and/or in any document based thereon, the provisions of GCC Clause 33 shall apply to such request.

17. Plant and Equipment

- 17.1 Subject to GCC Sub-Clause 10.2, the Contractor shall manufacture or procure and transport all the Plant and Equipment in an expeditious and orderly manner to the Site.

17.2 Employer-Supplied Plant, Equipment, and Materials

If the corresponding Appendix – 6 (Scope of Works and Supply by the Employer) to the Contract Agreement provides that the Employer shall furnish any specific items of machinery, equipment or materials to the Contractor, the following provisions shall apply:

- 17.2.1 The Employer shall, at its own risk and expense, transport each item to the place on or near the Site as agreed upon by the parties and make such item available to the Contractor at the time specified in the program furnished by the Contractor, pursuant to GCC Sub-Clause 14.2, unless otherwise mutually agreed.
- 17.2.2 The equipment & materials to be furnished by the Employer shall be supplied to the Contractor at the depots established by the Contractor or the Employer. The Lorry Receipts for the materials will be handed over to the Contractor by the representative of the Employer as and when the same are received. The Contractor shall be responsible for taking delivery of these materials from the railways/road transporter, unloading them from the transporter, carting them to different stores built by him for the purpose, the unloading and cartage being at the cost of the Contractor. However, any octroi or toll tax if legally payable by the Contractor shall be reimbursed to him at actuals, subject to production of documentary evidence. All wharfage and demurrage charges incurred due to delay in taking delivery will be to the Contractor's account, except those due to reasons beyond his control in which case the Contractor shall immediately intimate the Engineer for settling the claims. The Contractor shall be responsible for proper handling and storage of these

materials from the time of receipt upto the time of Taking Over of the Facilities by the Employer.

- 17.2.3 Yards and store provided by the Contractor for stacking and storage of materials shall be open for inspection by the Employer as and when required. The cost of handling and storage shall be to the Contractor's account.
- 17.2.4 Upon receipt of such item, the Contractor shall inspect the same visually and notify the Project Manager of any detected shortage, defect or default. For the material being arranged by the Employer and supplied to the Contractor for erection, are received short, broken or damaged, an entry shall be made in the delivery register of the railway authorities/road transporter as far as possible and a report of the same giving full details of shortage and damages along with a copy of report entered in the delivery register of the road transporter/railways shall be submitted by the Contractor to the Project Manager and Employer's consignee immediately. The Employer shall immediately remedy any shortage, defect or default, or the Contractor shall, if practicable and possible, at the request of the Employer, remedy such shortage, defect or default at the Employer's cost and expense. After inspection, such item shall fall under the care, custody and control of the Contractor. The provision of this GCC Sub-Clause 17.2.4 shall apply to any item supplied to remedy any such shortage or default or to substitute for any defective item, or shall apply to defective items that have been repaired.
- 17.2.5 The foregoing responsibilities of the Contractor and its obligations of care, custody and control shall not relieve the Employer of liability for any undetected shortage, defect or default, nor place the Contractor under any liability for any such shortage, defect or default whether under GCC Clause 22 or under any other provision of Contract.

17.3 Transportation

- 17.3.1 The Contractor shall at its own risk and expense transport all the Plant and Equipment and the Contractor's Equipment to the Site by the mode of transport that the Contractor judges most suitable under all the circumstances.
- 17.3.2 Unless otherwise provided in the Contract, the Contractor shall be entitled to select any safe mode of transport operated by any person to carry the Plant and Equipment and the Contractor's Equipment.

17.3.3 Upon dispatch of each shipment of the Plant and Equipment and the Contractor's Equipment, the Contractor shall notify the Employer by telex, facsimile or Electronic Data Interchange (EDI) of the description of the Plant and Equipment and of the Contractor's Equipment, the point and means of dispatch, and the estimated time and point of arrival in the country where the Site is located, if applicable, and at the Site. The Contractor shall furnish the Employer with relevant shipping documents to be agreed upon between the parties.

17.3.4 The Contractor shall be responsible for obtaining, if necessary, approvals from the authorities for transportation of the Plant and Equipment and the Contractor's Equipment to the Site. The Employer shall use its best endeavors in a timely and expeditious manner to assist the Contractor in obtaining such approvals, if requested by the Contractor. The Contractor shall indemnify and hold harmless the Employer from and against any claim for damage to roads, bridges or any other traffic facilities that may be caused by the transport of the Plant and Equipment and the Contractor's Equipment to the Site.

17.4 Delivery and Documents

17.4.1 Delivery Documents

Upon shipment, the Contractor shall notify the Employer with full details of the dispatch and shall furnish the documents as specified in the corresponding Appendix - 1 (Terms and Procedures of Payment) to the Contract Agreement

17.4.2 Packing

17.4.2.1 The Contractor shall provide such packing of the Goods as it is required to prevent their damage or deterioration during transit to their final destination as indicated in the Contract. The packing shall be sufficient to withstand, without limitation, rough handling during transit and exposure to extreme temperatures, salt and precipitation during transit and open storage. Packing case size and weights shall take into consideration, where appropriate, the remoteness of the Goods final destination and the absence of heavy handling facilities at all points in transit.

17.4.2.2 The packing, marking and documentation within and outside the packages shall comply strictly with such special requirements as shall be expressly provided for in the Contract and, subject to any subsequent instruction ordered by the Employer consistent with the requirements of the Contract.

18. Installation

18.1 Setting Out/Supervision/Labor

18.1.1 Bench Mark: The Contractor shall be responsible for the true and proper setting-out of the Facilities in relation to bench marks, reference marks and lines provided to it in writing by or on behalf of the Employer.

If, at any time during the progress of installation of the Facilities, any error shall appear in the position, level or alignment of the Facilities, the Contractor shall forthwith notify the Project Manager of such error and, at its own expense, immediately rectify such error to the reasonable satisfaction of the Project Manager. If such error is based on incorrect data provided in writing by or on behalf of the Employer, the expense of rectifying the same shall be borne by the Employer.

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

18.1.3 Labor:

- (a) The Contractor shall provide and employ on the Site in the installation of the Facilities such skilled, semi-skilled and unskilled labor as is necessary for the proper and timely execution of the Contract. The Contractor is encouraged to use local labor that has the necessary skills.
- (b) Unless otherwise provided in the Contract, the Contractor at its own expense shall be responsible for the recruitment, transportation, accommodation and catering of all labor, local or expatriate, required for the execution of the Contract and for all payments in connection therewith.
- (c) The Contractor shall at all times during the progress of the Contract use its best endeavors to prevent any unlawful, riotous or disorderly conduct or behavior by or amongst its employees and the labor of its Subcontractors.

- (d) The Contractor shall, in all dealings with its labor and the labor of its Subcontractors currently employed on or connected with the Contract, pay due regard to all recognized festivals, official holidays, religious or other customs and all local laws and regulations pertaining to the employment of labor.

18.2 Contractor's Equipment

18.2.1 All Contractor's Equipment brought by the Contractor onto the Site shall be deemed to be intended to be used exclusively for the execution of the Contract. The Contractor shall not remove the same from the Site without the Project Manager's consent that such Contractor's Equipment is no longer required for the execution of the Contract.

18.2.2 Unless otherwise specified in the Contract, upon completion of the Facilities, the Contractor shall remove from the Site all Equipment brought by the Contractor onto the Site and any surplus materials remaining thereon.

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

18.3 Site Regulations and Safety

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

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

18.3.1 Compliance with Labour Regulations

18.3.1.1 During continuance of the contract, the Contractor and his sub-contractors shall abide at all times by all applicable existing labour enactments and rules made thereunder, regulations notifications and byelaws of the State or Central Government or local authority and any other labour law (including

rules), regulations by laws that may be passed or notification that may be issued under any labour law in future either by the State or the Central Government or the local authority. The employees of the Contractor and the Sub-contractor in no case shall be treated as the employees of the Employer at any point of time.

18.3.1.2 The Contractor shall keep the Employer indemnified in case any action is taken against the Employer by the competent authority on account of contravention of any of the provisions of any Act or rules made thereunder, regulations or notifications including amendments.

18.3.1.3 If the Employer is caused to pay under any law as principal employer such amounts as may be necessary to cause or observe, or for non observance of the provisions stipulated in the notifications/ byelaws/Acts/ Rules/regulations including amendments, if any, on the part of the Contractor, the Employer shall have the right to deduct any money due to the Contractor under this contract or any other contract with the employer including his amount of performance security for adjusting the aforesaid payment. The Employer shall also have right to recover from the Contractor any sum required or estimated to be required for making good the loss or damage suffered by the Employer.

Notwithstanding the above, the Contractor shall furnish to the Employer the details/documents evidencing the Contractor's compliance to the laws applicable to establishments engaged in building and other construction works, as may be sought by the Employer. In particular the Contractor shall submit quarterly certificate regarding compliance in respect of provisions of Employees' Provident Fund and Misc. Provisions Act 1952 to the Employer.

18.3.1.4 Salient features of some major laws applicable to establishments engaged in building and other construction works:

(a) Workmen Compensation Act 1923: The Act provides for compensation in case of injury by accident arising out of and during the course of employment.

(b) Payment of Gratuity Act 1972: Gratuity is payable to an employee under the Act on satisfaction of certain conditions on separation if an employee has completed 5 years service or more or on death at the rate of 15 days wages for every completed year of service. The Act is applicable to all establishments employing 10 or more employees.

- (c) Employee P.F. and Miscellaneous Provision Act 1952: The Act provides for monthly contribution by the employer plus workers @10% or 8.33%. The benefits under the Act are:
 - (i) Pension or family pension on retirement or death, as the case may be.
 - (ii) Deposit linked insurance on death in harness of the worker.
 - (iii) Payment of P.F. accumulation on retirement/death etc.
- (d) Maternity Benefit Act 1951: The Act provides for leave and some other benefits to women employees in case of confinement or miscarriage etc.
- (e) Contract Labour (Regulation & Abolition) Act 1970: The Act provides for certain welfare measures to be provided by the Contractor to contract labour and in case the Contractor fails to provide, the same are required to be provided, by the Principal Employer by law. The Principal Employer is required to take Certification of Registration and the Contractor is required to take license from the designated Officer. The Act is applicable to the establishments or Contractor of Principal Employer if they employ 20 or more labour contract labour.
- (f) Minimum Wages Act 1948: The Employer is supposed to pay not less than the Minimum Wages fixed by appropriate Government as per provision of the Act if the employment is a scheduled employment. Construction of Buildings, Roads, Runways are scheduled employments.
- (g) Payment of Wages Act 1936: It lays down as to by what date the wages are to be paid, when it will be paid and what deductions can be made from the wages of the workers.
- (h) Equal Remuneration Act 1979: The Act provides for payment of equal wages for work of equal nature to Male and Female workers and for not making discrimination against Female employees in the matters of transfers, training and promotions etc.
- (i) Payment of Bonus Act 1965: The Act is applicable to all establishments employing 20 or more employees. The Act provides for payments of annual bonus subject to a minimum of 8.33% of wages and maximum of 20% of wages to employees drawing Rs. 3500/- per month or less. The bonus is to be paid to employees getting Rs. 2500/- per month or above upto Rs. 3500/- per month shall be worked out by taking wages as Rs. 2500/- per month only. The Act does not apply to certain

establishments. The newly set-up establishments are exempted for five years in certain circumstances. Some of the State Governments have reduced the employment size from 20 to 10 for the purpose of applicability of this Act.

- (j) Industrial Dispute Act 1947: the Act lays down the machinery the procedure for resolution of Industrial disputes, in what situations a strike or lock-out becomes illegal and what are the requirements for laying off or retrenching the employees or closing down the establishment.
- (k) Industrial Employment (Standing Orders) Act 1946: It is applicable to all establishments employing 100 or more workmen (employment size reduced by some of the States and Central Government to 50). The Act provides for laying down rules governing the conditions of employment by the Employer on matters provided in the Act and get the same certified by the designated Authority.
- (l) Trade Unions Act 1926: The Act lays down the procedure for registration of trade unions of workmen and employers. The Trade Unions registered under the Act have been given certain immunities from civil and criminal liabilities.
- (m) Child Labour (Prohibition & Regulation) Act 1986: The Act prohibits employment of children below 14 years of age in certain occupations and processes and provides for regulation of employment of children in all other occupations and processes. Employment of Child Labour is prohibited in Building and Construction Industry.
- (n) Inter-State Migrant workmen's (Regulation of Employment & Conditions of Service Act 1979: The Act is applicable to an establishment which employs 5 or more inter-state migrant workmen through an intermediary (who has recruited workmen in one state for employment in the establishment situated in another state). The Inter-State migrant workmen, in an establishment to which this Act becomes applicable, are required to be provided certain facilities such as housing, medical aid, traveling expenses from home upto the establishment and back, etc.
- (o) The Building and Other Construction workers (Regulation of Employment and Conditions of Service) Act 1996 and the Cess Act of 1996 : All the establishments who carry on any building or other construction work and employ 10 or more workers are covered under this Act. All such establishments are required to pay cess at the rate not

exceeding 2% of the cost of construction as may be modified by the Government. The Employer of the establishment is required to provide safety measures at the Building or construction work and other welfare measures, such as Canteens, First-Aid facilities, Ambulance, Housing accommodations for workers near the work place etc. The Employer to whom the Act applies has to obtain a registration certificate from the Registering Officer appointed by the government.

- (p) Factories Act 1948: The Act lays down the procedure for approval at plans before setting up a factory, health and safety provisions, welfare provisions, working hours, annual earned leave and rendering information regarding accidents or dangerous occurrences to designated authorities. It is applicable to premises employing 10 persons or more with aid of power or 20 or more persons without the aid of power engaged in manufacturing process.

18.3.2 Protection of Environment

The Contractor shall take all reasonable steps to protect the environment on and off the Site and to avoid damage or nuisance to persons or to property of the public or others resulting from pollution, noise or other causes arising as consequence of his methods of operation.

During continuance of the Contract, the Contractor and his Sub-contractors shall abide at all times by all existing enactments on environmental protection and rules made thereunder, regulations, notifications and bye-laws of the State or Central Government, or local authorities and any other law, bye-law, regulations that may be passed or notification that may be issued in this respect in future by the State or Central Government or the local authority.

Salient features of some of the major laws that are applicable are given below:

The Water (Prevention and Control of Pollution) Act, 1974, This provides for the prevention and control of water pollution and the maintaining and restoring of wholesomeness of water. 'Pollution' means such contamination of water or such alteration of the physical, chemical or biological properties of water or such discharge of any sewage or trade effluent or of any other liquid, gaseous or solid substance into water (whether directly or indirectly) as may, or is likely to, create a nuisance or render such water harmful or injurious to public health or safety, or to domestic, commercial, industrial, agricultural or other legitimate uses, or to the life and health of animals or plants or of aquatic organisms.

The Air (Prevention and Control of Pollution) Act, 1981, This provides for prevention, control and abatement of air pollution. 'Air Pollution' means the presence in the atmosphere of any 'air pollutant', which means any solid, liquid or gaseous substance (including noise) present in the atmosphere in such concentration as may be or tend to be injurious to human beings or other living creatures or plants or property or environment.

The Environment (Protection) Act, 1986, This provides for the protection and improvement of environment and for matters connected therewith, and the prevention of hazards to human beings, other living creatures, plants and property. 'Environment' includes water, air and land and the inter-relationship which exists among and between water, air and land, and human beings, other living creatures, plants, micro-organism and property.

The Public Liability Insurance Act, 1991, This provides for public liability insurance for the purpose of providing immediate relief to the persons affected by accident occurring while handling hazardous substances and for matters connected herewith or incidental thereto. Hazardous substance means any substance or preparation which is defined as hazardous substance under Environment (Protection) Act, 1986, and exceeding such quantity as may be specified by notification by the Central Government.

18.3.3 Safety Precautions

18.3.3.1 The Contractor shall observe all applicable regulations regarding safety on the Site.

Unless otherwise agreed, the Contractor shall, from the commencement of work on Site until Taking Over, provide:

- a) fencing, lighting, guarding and watching of the Works, and
- b) temporary roadways, footways, guards and fences which may be necessary for the accommodation and protection of Employer / his representatives and occupiers of adjacent property, the public and others.

18.3.3.2 The Contractor shall ensure proper safety of all the workmen, materials, plant and equipment belonging to him or to Employer or to others, working at the Site. The Contractor shall also be responsible for provision of all safety notices and safety equipment required both by the relevant legislations and the Project Manager, as he may deem necessary.

18.3.3.3 The Contractor will notify well in advance to the Project Manager of his intention to bring to the Site any container filled with liquid or gaseous fuel or explosive or petroleum substance or such chemicals which may involve hazards. The Project Manager shall have the right to prescribe the conditions, under which such container is to be stored, handled and used during the performance of the works and the Contractor shall strictly adhere to and comply with such instructions. The Project Manager shall have the right at his sole discretion to inspect any such container or such construction plant/equipment for which material in the container is required to be used and if in his opinion, its use is not safe, he may forbid its use. No claim due to such prohibition shall be entertained by the Employer and the Employer shall not entertain any claim of the Contractor towards additional safety provisions/conditions to be provided for/constructed as per the Project Manager's instructions.

Further, any such decision of the Project Manager shall not, in any way, absolve the Contractor of his responsibilities and in case, use of such a container or entry thereof into the Site area is forbidden by the Project Manager, the Contractor shall use alternative methods with the approval of the Project Manager without any cost implication to the Employer or extension of work schedule.

18.3.3.4 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 Petroleum Act 1934, Explosives Act, 1948 and Petroleum and Carbide of Calcium Manual published by the Chief Inspector of Explosives of India. All such storage shall have prior approval of the Project Manager. In case, any approvals are necessary from the Chief Inspector (Explosives) or any statutory authorities, the Contractor shall be responsible for obtaining the same.

18.3.3.5 All equipment used in construction and erection 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 shall be strictly operated and maintained by the Contractor in accordance with manufacturer's Operation Manual and safety instructions and as per Guidelines/rules of Employer in this regard.

18.3.3.6 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 the Project Manager or by the person authorised by him.

- 18.3.3.7 The Contractor shall be fully responsible for the safe storage of his and his Sub-Contractor's radioactive sources in accordance with BARC/DAE Rules and other applicable provisions. All precautionary measures stipulated by BARC/DAE in connection with use, storage and handling of such material will be taken by the Contractor.
- 18.3.3.8 The Contractor shall provide suitable safety equipment of prescribed standard to all employees and workmen according to the need, as may be directed by the Project Manager who will also have right to examine these safety equipment to determine their suitability, reliability, acceptability and adaptability.
- 18.3.3.9 Where explosives are to be used, the same shall be used under the direct control and supervision of an expert, experienced, qualified and competent person strictly in accordance with the Code of Practice/Rules framed under Indian Explosives Act pertaining to handling, storage and use of explosives.
- 18.3.3.10 The Contractor shall provide safe working conditions to all workmen and employees at the Site including safe means of access, railings, stairs, ladders, scaffoldings etc. The scaffoldings shall be erected under the control and supervision of an experienced and competent person. For erection, good and standard quality of material only shall be used by the Contractor.
- 18.3.3.11 The Contractor shall not interfere or disturb electric fuses, wiring and other electrical equipment belonging to the Employer or other Contractors under any circumstances, whatsoever, unless expressly permitted in writing by Employer to handle such fuses, wiring or electrical equipment
- 18.3.3.12 Before the Contractor connects any electrical appliances to any plug or socket belonging to the other Contractor or Employer, he shall:
- a. Satisfy the Project Manager that the appliance is in good working condition;
 - b. Inform the Project Manager of the maximum current rating, voltage and phases of the appliances;
 - c. Obtain permission of the Project Manager detailing the sockets to which the appliances may be connected.

- 18.3.3.13 The Project Manager will not grant permission to connect until he is satisfied that;
- a. The appliance is in good condition and is fitted with suitable plug;
 - b. The appliance is fitted with a suitable cable having two earth conductors, one of which shall be an earthed metal sheath surrounding the cores.
- 18.3.3.14 No electric cable in use by the Contractor/Employer will be disturbed without prior permission. No weight of any description will be imposed on any cable and no ladder or similar equipment will rest against or attached to it.
- 18.3.3.15 No repair work shall be carried out on any live equipment. The equipment must be declared safe by the Project Manager and a permit to work shall be issued by the Project Manager before any repair work is carried out by the Contractor. While working on electric lines/equipment, whether live or dead, suitable type and sufficient quantity of tools will have to be provided by the Contractor to electricians/workmen/officers.
- 18.3.3.16 The Contractors shall employ necessary number of qualified, full time electricians/electrical supervisors to maintain his temporary electrical installation.
- 18.3.3.17 The Contractor employing more than 250 workmen whether temporary, casual, probationer, regular or permanent or on contract, shall employ at least one full time officer exclusively as safety officer to supervise safety aspects of the equipment and workmen, who will coordinate with the Project Safety Officer. In case of work being carried out through Sub-Contractors, the Sub-Contractor's workmen/employees will also be considered as the Contractor's employees/workmen for the above purpose.
- The name and address of such Safety Officers of the Contractor will be promptly informed in writing to Project Manager with a copy to Safety Officer-In charge before he starts work or immediately after any change of the incumbent is made during currency of the Contract.
- 18.3.3.18 In case any accident occurs during the construction/ erection or other associated activities undertaken by the Contractor thereby causing any minor or major or fatal injury to his employees due to any reason, whatsoever, it shall be the responsibility of the Contractor to promptly inform the same to

the Project Manager in prescribed form and also to all the authorities envisaged under the applicable laws.

- 18.3.3.19 The Project Manager shall have the right at his sole discretion to stop the work, if in his opinion the work is being carried out in such a way that it may cause accidents and endanger the safety of the persons and/or property, and/or equipment. In such cases, the Contractor shall be informed in writing about the nature of hazards and possible injury/accident and he shall comply 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 Project Manager within 3 days of such stoppage of work and decision of the Project Manager in this respect shall be conclusive and binding on the Contractor.
- 18.3.3.20 The Contractor shall not be entitled for any damages/compensation for stoppage of work due to safety reasons as provided in GCC Sub-Clause 18.3.3.19 above and the period of such stoppage of work will not be taken as an extension of time for completion of work and will not be the ground for waiver of levy of liquidated damages.
- 18.3.3.21 It is mandatory for the Contractor to observe during the execution of the works, requirements of Safety Rules which would generally include but not limited to following:

Safety Rules

- a) Each employee shall be provided with initial indoctrination regarding safety by the Contractor, so as to enable him to conduct his work in a safe manner.
- b) No employee shall be given a new assignment of work unfamiliar to him without proper introduction as to the hazards incident thereto, both to himself and his fellow employees.
- c) Under no circumstances shall an employee hurry or take unnecessary chance when working under hazardous conditions.
- d) Employees must not leave naked fires unattended. Smoking shall not be permitted around fire prone areas and adequate fire fighting equipment shall be provided at crucial location.
- e) Employees under the influence of any intoxicating beverage, even to the slightest degree shall not be permitted to remain at work.

- f) There shall be a suitable arrangement at every work site for rendering prompt and sufficient first aid to the injured.
- g) The staircases and passageways shall be adequately lighted.
- h) The employees when working around moving machinery, must not be permitted to wear loose garments. Safety shoes are recommended when working in shops or places where materials or tools are likely to fall. Only experienced workers shall be permitted to go behind guard rails or to clean around energized or moving equipment.
- i) The employees must use the standard protection equipment intended for each job. Each piece of equipment shall be inspected before and after it is used.
- j) Requirements of ventilation in underwater working to licensed and experienced divers, use of gum boots for working in slushy or in inundated conditions are essential requirements to be fulfilled.
- k) In case of rock excavation, blasting shall invariably be done through licensed blasters and other precautions during blasting and storage/transport of charge material shall be observed strictly.

18.3.3.22 The Contractor shall follow and comply with all Employer Safety Rules, relevant provisions of applicable laws pertaining to the safety of workmen, employees, plant and equipment as may be prescribed from time to time without any demur, protest or contest or reservations. In case of any discrepancy between statutory requirement and Employer Safety Rules referred above, the latter shall be binding on the Contractor unless the statutory provisions are more stringent.

18.3.3.23 If the Contractor fails in providing safe working environment as per Employer Safety Rules or continues the work even after being instructed to stop work by the Project Manager as provided in GCC Sub-Clause 18.3.3.19 above, the Contractor shall promptly pay to Employer, on demand by the Employer, compensation at the rate of Rs. 5,000/- per day of part thereof till the instructions are complied with and so certified by the Project Manager. However, in case of accident taking place causing injury to any individual, the provisions contained in GCC Sub-Clause 18.3.3.24 shall also apply in addition to compensation mentioned in this Clause.

18.3.3.24 If the Contractor does not take adequate safety precautions and/or fails to comply with the Safety Rules as prescribed by the Employer or under the applicable law for the safety of the equipment and plant or for the safety of personnel or the Contractor does not prevent hazardous conditions which cause injury to his own employees or employees of other Contractors or Employer's employees or any other person who are at Site or adjacent thereto, then the Contractor shall be responsible for payment of a sum as indicated below to be deposited with the Employer, which will be passed on by the Employer to such person or next to kith and kin of the deceased:

a.	Fatal injury or accident causing death	Rs. 1,000,000/- per person
b.	Major injuries or accident causing 25% more permanent disablement	Rs. 100,000/- per person

Permanent disablement shall have same meaning as indicated in Workmen's Compensation Act. The amount to be deposited with Employer and passed on to the person mentioned above shall be in addition to the compensation payable under the relevant provisions of the Workmen's Compensation Act and rules framed there under or any other applicable laws as applicable from time to time. In case the Contractor does not deposit the above mentioned amount with Employer, such amount shall be recovered by Employer from any monies due or becoming due to the Contractor under the contract or any other on-going contract.

18.3.3.25 If the Contractor observes all the Safety Rules and Codes, Statutory Laws and Rules during the currency of Contract awarded by the Employer and no accident occurs then Employer may consider the performance of the Contractor and award suitable 'ACCIDENT FREE SAFETY MERITORIOUS AWARD' as per scheme as may be announced separately from time to time.

18.4 Opportunities for Other Contractors

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

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

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

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

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

18.5 Emergency Work

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

If the Contractor is unable or unwilling to do such work immediately, the Employer may do or cause such work to be done as the Employer may determine is necessary in order to prevent damage to the Facilities. In such event the Employer shall, as soon as practicable after the occurrence of any such emergency, notify the Contractor in writing of such emergency, the work done and the reasons therefor. If the work done or caused to be done by the Employer is work that the Contractor was liable to do at its own expense under the Contract, the reasonable costs incurred by the Employer in connection therewith shall be paid by the Contractor to the Employer. In case such work is not in the scope of the Contractor, the cost of such remedial work shall be borne by the Employer.

18.6 Site Clearance

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

18.6.2 Clearance of Site after Completion: After Completion of all parts of the Facilities, the Contractor shall clear away and remove all wreckage, rubbish and debris of any kind from the Site, and shall leave the Site and Facilities clean and safe.

18.7 Watching and Lighting

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

18.8 Work at Night and on Holidays

18.8.1 Unless otherwise provided in the Contract, no work shall be carried out during the night and on public holidays of the country where the Site is located without prior written consent of the Employer, except where work is necessary or required to ensure safety of the Facilities or for the protection of life, or to prevent loss or damage to property, when the Contractor shall immediately advise the Project Manager, provided that provisions of this GCC Sub-Clause 18.8.1 shall not apply to any work which is customarily carried out by rotary or double-shifts.

18.8.2 Notwithstanding GCC Sub-Clauses 18.8.1 or 18.1.3, if and when the Contractor considers it necessary to carry out work at night or on public holidays so as to meet the Time for Completion and requests the Employer's consent thereto, the Employer shall not unreasonably withhold such consent.

19. Test and Inspection

19.1 The Contractor shall at its own expense carry out at the place of manufacture and/or on the Site all such tests and/or inspections of the Plant and Equipment and any part of the Facilities as are specified in the Contract.

19.2 The Employer and the Project Manager or their designated representatives shall be entitled to attend the aforesaid test and/or inspection, provided that the Employer shall bear all costs and expenses incurred in connection with such attendance including, but not limited to, all traveling and board and lodging expenses.

- 19.3 Whenever the Contractor is ready to carry out any such test and/or inspection, the Contractor shall give four weeks advance notice of such test and/or inspection and of the place and time thereof to the Project Manager. The Contractor shall obtain from any relevant third party or manufacturer any necessary permission or consent to enable the Employer and the Project Manager (or their designated representatives) to attend the test and/or inspection.
- 19.4 The Contractor shall provide the Project Manager with a certified report of the results of any such test and/or inspection.
- If the Employer or Project Manager (or their designated representatives) fails to attend the test and/or inspection, or if it is agreed between the parties that such persons shall not do so, then the Contractor may proceed with the test and/or inspection in the absence of such persons, and may provide the Project Manager with a certified report of the results thereof.
- 19.5 The Project Manager may require the Contractor to carry out any test and/or inspection not required by the Contract, provided that the Contractor's reasonable costs and expenses incurred in the carrying out of such test and/or inspection shall be added to the Contract Price. Further, if such test and/or inspection impedes the progress of work on the Facilities and/or the Contractor's performance of its other obligations under the Contract, due allowance will be made in respect of the Time for Completion and the other obligations so affected.
- 19.6 If any Plant and Equipment or any part of the Facilities fails to pass any test and/or inspection, the Contractor shall either rectify or replace such Plant and Equipment or part of the Facilities and shall repeat the test and/or inspection upon giving a notice under GCC Sub-Clause 19.3.
- 19.7 If any dispute or difference of opinion shall arise between the parties in connection with or arising out of the test and/or inspection of the Plant and Equipment or part of the Facilities that cannot be settled between the parties within a reasonable period of time, it may be referred to an Arbitrator for determination in accordance with GCC Sub-Clause 39.
- 19.8 The Contractor shall afford the Employer and the Project Manager, at the Employer's expense, access at any reasonable time to any place where the Plant and Equipment are being manufactured or the Facilities are being installed, in order to inspect the progress and the manner of manufacture or

installation, provided that the Project Manager shall give the Contractor a reasonable prior notice.

19.9 The Contractor agrees that neither the execution of a test and/or inspection of Plant and Equipment or any part of the Facilities, nor the attendance by the Employer or the Project Manager, nor the issue of any test certificate pursuant to GCC Sub-Clause 19.4, shall release the Contractor from any other responsibilities under the Contract.

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

19.11 The Contractor shall uncover any part of the Facilities or foundations, or shall make openings in or through the same as the Project Manager may from time to time require at the Site, and shall reinstate and make good such part or parts.

If any parts of the Facilities or foundations have been covered up at the Site after compliance with the requirement of GCC Sub-Clause 19.10 and are found to be executed in accordance with the Contract, the expenses of uncovering, making openings in or through, reinstating, and making good the same shall be borne by the Employer, and the Time for Completion shall be reasonably adjusted to the extent that the Contractor has thereby been delayed or impeded in the performance of any of its obligations under the Contract.

20. Completion of the Facilities and Operational Acceptance

20.1 Completion of the Facilities

20.1.1 Physical Completion

20.1.1.1 As soon as the Facilities or any part thereof has, in the opinion of the Contractor, been completed operationally and structurally and put in a tight and clean condition as specified in the Technical Specifications, excluding

minor items not materially affecting the operation or safety of the Facilities, the Contractor shall so notify the Employer in writing.

20.1.2 Pre-Commissioning

20.1.2.1 Within seven (7) days after receipt of the notice from the Contractor under GCC Sub-Clause 20.1.1.1, the Project Manager shall deploy the operating and maintenance personnel and other material if so specified in the corresponding Appendix – 6 (Scope of Works and Supply by the Employer) to the Contract Agreement for Precommissioning of the Facilities or any part thereof.

20.1.2.2 As soon as reasonably practicable after the operating and maintenance personnel have been deployed by the Employer and other materials have been provided by the Employer in accordance with GCC Sub-Clause 20.1.2.1, the Contractor shall commence Precommissioning of the Facilities or the relevant part thereof, in presence of the Employer's representatives, as per procedures detailed in Technical Specifications in preparation for Commissioning.

20.1.2.3 As soon as all works in respect of Precommissioning are successfully completed and, in the opinion of the Contractor, the Facilities or any part thereof is ready for Commissioning, the Contractor shall notify the Project Manager in writing.

20.1.2.4 The Project Manager shall, within fourteen (14) days after receipt of the Contractor's notice under GCC Sub-Clause 20.1.2.3, notify the Contractor in writing of any defects and/or deficiencies.

20.1.2.5 If the Project Manager notifies the Contractor of any defects and/or deficiencies, the Contractor shall then correct such defects and/or deficiencies, and shall repeat the procedure described in GCC Sub-Clause 20.1.2.2. If in the opinion of the Contractor, the Facilities or any part thereof is now ready for Commissioning, the Contractor shall again notify the Project Manager in writing. If further defects and/or deficiencies are not notified by the Project Manager and if the Project Manager is satisfied that the Precommissioning of Facilities or that part thereof have been successfully completed, the Project Manager shall, within seven (7) days after receipt of the Contractor's such notice, advise the Contractor to proceed with the Commissioning of the Facilities or part thereof.

20.1.2.6 If the Project Manager fails to inform the Contractor of any defects and/or deficiencies within fourteen (14) days after receipt of the Contractor's notice under GCC Sub-Clause 20.1.2.4 or within seven (7) days after receipt of the

Contractor's notice on completion of repeat procedure under GCC Sub-Clause 20.1.2.5, then the Precommissioning of the Facilities or that part thereof shall be considered to have been successfully completed as of the date of the Contractor's notice.

20.1.2.7 As soon as possible after Precommissioning, the Contractor shall complete all outstanding minor items so that the Facilities are fully in accordance with the requirements of the Contract, failing which the Employer will undertake such completion and deduct the costs thereof from any monies owing to the Contractor.

20.1.2.8 In the event that the Contractor is unable to proceed with the Precommissioning of the Facilities pursuant to Sub-Clause 20.1.2 for reasons attributable to the Employer either on account of non-availability of other facilities under the responsibilities of other contractor(s), or for reasons beyond the Employer's control, the following provisions shall apply:

When the Contractor is notified by the Project Manager that he will be unable to proceed with the activities and obligations pursuant to above GCC Sub-Clause 20.1.2.8, the Contractor shall be entitled to the following:

- a) the Time of Completion shall be extended for the period of suspension without imposition of liquidated damages pursuant to GCC Sub-Clause 21.2.
- b) payments due to the Contractor in accordance with the provisions specified in Appendix I (Terms and Procedures of Payment) to the Contract Agreement, which would have not been payable in normal circumstances due to non-completion of the said activities and obligations, shall be released to the Contractor against submission of a security in the form of a bank guarantee of equivalent amount acceptable to the Employer, and which shall become null and void when the Contractor will have complied with its obligations regarding these payments, subject to the provisions of GCC Sub-Clause 21.2.9 below.
- c) the expenses payable by the Contractor to the Bankers toward the extension of above security and extension of other securities under the Contract, of which validity need to be extended, shall be reimbursed to the Contractor by the Employer against documentary evidence.
- d) the additional charges toward the care of the Facilities pursuant to GCC Sub-Clause 28.1 shall be reimbursed to the Contractor by the Employer for the period between the notification mentioned above and the

notification mentioned in GCC Sub-Clause 20.1.2.10 below. The provisions of GCC Sub-Clause 29.2 shall apply to the Facilities during the same period.

20.1.2.9 In the event that the period of suspension under GCC Sub-Clause 20.1.2.8 actually exceeds one hundred eighty (180) days, the Employer and the Contractor shall mutually agree to any additional compensation payable to the Contractor.

20.1.2.10 As and when, after the period of suspension under GCC Sub-Clause 20.1.2.8, the Contractor is notified by the Project Manager that the Facilities are ready for Precommissioning, the Contractor shall proceed without delay in performing all activities and obligations under the Contract.

20.1.3 Commissioning

20.1.3.1 Commissioning of the Facilities or any part thereof shall be commenced by the Contractor immediately after being advised by the Project Manager, pursuant to GCC Sub-Clause 20.1.2.5 or immediately after the Precommissioning is considered to be completed under GCC Sub-Clause 20.1.2.6.

20.1.3.1.1 Commissioning of the Facilities or any part thereof shall be completed by the Contractor as per procedures detailed in Technical Specifications.

20.1.3.2 The Employer shall, to the extent specified in Appendix – 6 (Scope of works and supply by the Employer), deploy the operating and maintenance personnel and supply all raw materials, utilities, lubricants, chemicals, catalysts, facilities, services and other materials required for commissioning.

20.1.3.3 In the event that the Contractor is unable to proceed with the Commissioning of the Facilities pursuant to Sub-Clause 20.1.3 for reasons attributable to the Employer either on account of non-availability of other facilities under the responsibilities of other contractor(s), or for reasons beyond the Employer's control, the provisions of GCC Sub-Clause 20.1.2.8 to 20.1.2.9 shall apply.

20.1.3.4 As and when, after the period of suspension under GCC Sub-Clause 20.1.2.8, the Contractor is notified by the Project Manager that the Facilities are ready for Commissioning, the Contractor shall proceed without delay in performing all activities and obligations under the Contract.

20.1.4 Trial - Operation

20.1.4.1 Trial – Operation of the Facilities or any part thereof shall be commenced by the Contractor immediately after the Commissioning is completed pursuant to GCC Sub-Clause 20.1.3.1.1.

20.1.4.2 Trial – Operation of the Facilities or any part thereof shall be completed by the Contractor for the period specified in Technical Specification (or for a continuous period of 24 hours where such period is not specified in Technical Specification) and as per procedures detailed in Technical Specifications.

20.1.4.3 At any time after the events set out in GCC Sub-Clause 20.1.4.2 have occurred, the Contractor may give a notice to the Project Manager requesting the issue of an Taking Over Certificate in the form provided in the Bidding Documents or in another form acceptable to the Employer in respect of the Facilities or the part thereof specified in such notice as of the date of such notice.

20.1.4.4 The Project Manager shall within twenty-one (21) days after receipt of the Contractor's notice, issue an Taking Over Certificate.

20.1.5 Taking Over

20.1.5.1 Upon successful Trial – Operation of the Facilities or any part thereof, pursuant to GCC Sub-Clause 20.1.4, the Project Manager shall issue to the Contractor a Taking Over Certificate as a proof of the acceptance of the Facilities or any part thereof. Such certificate shall not relieve the Contractor of any of his obligations which otherwise survive, by the terms and conditions of Contract after issue of such certificate.

20.1.5.2 If within twenty one (21) days after receipt of the Contractor's notice, the Project Manager fails to issue the Taking Over Certificate or fails to inform the Contractor in writing of the justifiable reasons why the Project Manager has not issued the Taking Over Certificate, the Facilities or the relevant part thereof shall be deemed to have been Taken Over as at the date of the Contractor's said notice.

20.1.5.3 Upon Taking Over of the Facilities or any part thereof, the Employer shall be responsible for the care and custody of the Facilities or the relevant part

thereof, together with the risk of loss or damage thereto, and shall thereafter take over the Facilities or the relevant part thereof.

20.2 Operational Acceptance

20.2.1 Guarantee Test

20.2.1.1 The Guarantee Test (and repeats thereof), if any specified in the SCC and/or the Technical Specification, shall be conducted by the Contractor after successful Trial – Operation of the Facilities or the relevant part thereof to ascertain whether the Facilities or the relevant part can attain the Functional Guarantees specified in the Contract Documents or if otherwise required as per the Technical Specifications. The Contractor's and Project Manager's advisory personnel may witness the Guarantee Test. The Contractor shall promptly provide the Employer with such information as the Employer may reasonably require in relation to the conduct and results of the Guarantee Test (and any repeats thereof).

20.2.1.2 If for reasons not attributable to the Contractor, the Guarantee Test of the Facilities or the relevant part thereof cannot be successfully completed within the time stipulated in the Technical Specifications the period for completing the same shall be as agreed upon by the Employer and the Contractor.

20.2.2 Operational Acceptance

20.2.2.1 Operational Acceptance shall occur in respect of the Facilities or any part thereof as mentioned below:

(I) In case no Functional Guarantees are applicable, Operational Acceptance shall occur when the Facilities or part thereof have been successfully Commissioned and Trial – Operation for the specified period have been successfully completed

(II) In case Functional Guarantees are applicable, Operational Acceptance shall occur when the Functional Guarantees are met or the Contractor has paid liquidated damages specified in GCC Sub-Clause 23.3 hereof; or

20.2.2.2 At any time after any of the events set out in GCC Sub-Clause 20.2.2.1 have occurred, the Contractor may give a notice to the Project Manager requesting the issue of an Operational Acceptance Certificate in the form provided in the Bidding Documents or in another form acceptable to the Employer in respect

of the Facilities or the part thereof specified in such notice as of the date of such notice.

- 20.2.2.3 The Project Manager shall within twenty-one (21) days after receipt of the Contractor's notice, issue an Operational Acceptance Certificate.
- 20.2.2.4 Upon Operational Acceptance, pursuant to GCC Sub-Clause 20.2.2.2, the Project Manager shall issue to the Contractor a Operational Acceptance Certificate as a proof of the final acceptance of the Plant and Equipment. Such certificate shall not relieve the Contractor of any of his obligations which otherwise survive, by the terms and conditions of Contract after issue of such certificate.
- 20.2.2.5 If within twenty one (21) days after receipt of the Contractor's notice, the Project Manager fails to issue the Operational Acceptance Certificate or fails to inform the Contractor in writing of the justifiable reasons why the Project Manager has not issued the Operational Acceptance Certificate, the Facilities or the relevant part thereof shall be deemed to have been accepted as at the date of the Contractor's said notice.

20.3 Partial Acceptance

- 20.3.1 If the Contract specifies that Commissioning shall be carried out in respect of parts of the Facilities, the provisions relating to Commissioning including the Trial – Operation and Guarantee Test shall apply to each such part of the Facilities individually, and the Operational Acceptance Certificate shall be issued accordingly for each such part of the Facilities.

F. Guarantees and Liabilities

21. Completion Time Guarantee

- 21.1 The Contractor guarantees that it shall attain Completion of the Facilities (or a part for which a separate time for completion is specified in the SCC) within the Time for Completion specified in the **SCC** pursuant to GCC Sub-Clause 4.2, or within such extended time to which the Contractor shall be entitled under GCC Clause 34 hereof.
- 21.2 If the Contractor fails to comply with the Time for Completion in accordance with Clause GCC 21 for the whole of the facilities, (or a part for which a separate time for completion is agreed) then the Contractor shall pay to the Employer a sum equivalent to half percent (0.5%) of the Contract Price as liquidated damages for such default and not as a penalty, without prejudice

to the Employer's other remedies under the Contract, for each week or part thereof which shall elapse between the relevant Time for Completion and the date stated in Taking Over Certificate of the whole of the Works (or a part for which a separate time for completion is agreed) subject to the limit of five percent (5%) of Contract Price. The Employer may, without prejudice to any other method of recovery, deduct the amount of such damages from any monies due or to become due to the Contractor. The payment or deduction of such damages shall not relieve the Contractor from his obligation to complete the Works, or from any other of his obligations and liabilities under the Contract.

21.3 No bonus will be given for earlier Completion of the Facilities or part thereof.

22. Defect Liability

22.1 The Contractor warrants that the Facilities or any part thereof shall be free from defects in the design, engineering, materials and workmanship of the Plant and Equipment supplied and of the work executed.

22.2 The Defect Liability Period shall be twelve (12) months from the date of Taking Over /Completion of Facilities (or any part thereof).

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

- (a) improper operation or maintenance of the Facilities by the Employer
- (b) operation of the Facilities outside specifications provided in the Contract
- (c) normal wear and tear.

22.3 The Contractor's obligations under this GCC Clause 22 shall not apply to

- (a) any materials that are supplied by the Employer under GCC Sub-Clause 17.2, are normally consumed in operation, or have a normal life shorter than the Defect Liability Period stated herein
- (b) any designs, specifications or other data designed, supplied or specified by or on behalf of the Employer or any matters for which the Contractor has disclaimed responsibility herein
- (c) any other materials supplied or any other work executed by or on behalf of the Employer, except for the work executed by the Employer under GCC Sub-Clause 22.7.

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

22.5 The Employer shall afford the Contractor all necessary access to the Facilities and the Site to enable the Contractor to perform its obligations under this GCC Clause 22. The Contractor may, with the consent of the Employer, remove from the Site any Plant and Equipment or any part of the Facilities that are defective if the nature of the defect, and/or any damage to the Facilities caused by the defect, is such that repairs cannot be expeditiously carried out at the Site.

22.6 If the repair, replacement or making good is of such a character that it may affect the efficiency of the Facilities or any part thereof, the Employer may give to the Contractor a notice requiring that tests of the defective part of the Facilities shall be made by the Contractor immediately upon completion of such remedial work, whereupon the Contractor shall carry out such tests.

If such part fails the tests, the Contractor shall carry out further repair, replacement or making good (as the case may be) until that part of the Facilities passes such tests.

22.7 If the Contractor fails to commence the work necessary to remedy such defect or any damage to the Facilities caused by such defect within a reasonable time (which shall in no event be considered to be less than fifteen (15) days), the Employer may, following notice to the Contractor, proceed to do such work, and the reasonable costs incurred by the Employer in connection therewith shall be paid to the Employer by the Contractor or may be deducted by the Employer from any monies due the Contractor or claimed under the Performance Security.

22.8 If the Facilities or any part thereof cannot be used by reason of such defect and/or making good of such defect, the Defect Liability Period of the Facilities or such part, as the case may be, shall be extended by a period equal to the period during which the Facilities or such part cannot be used by the Employer because of any of the aforesaid reasons.

Upon correction of the defects in the Facilities or any part thereof by repair/replacement, such repair/replacement shall have the Defect Liability Period extended by a period mentioned in GCC Sub-Clause 22.2 from the time of such replacement/repair of the facilities or any part thereof.

22.8.1 At the end of the Defect Liability Period, the Contractor's Liability ceases except for latent defects. The Contractor's liability for latent defects warranty shall be limited to period of ten (10) years from the end of Defect Liability Period. For the purpose of this clause, the latent defects shall be the defects inherently lying within the material or arising out of design deficiency, which do not manifest themselves during the Defect Liability Period defined in this GCC Clause 22, but later.

22.9 Except as provided in GCC Clauses 22 and 29, the Contractor shall be under no liability whatsoever and howsoever arising, and whether under the Contract or at law, in respect of defects in the Facilities or any part thereof, the Plant and Equipment, design or engineering or work executed that appear after Defect Liability Period except for the liability towards obligations that may survive in terms of the Contract after Defect Liability Period, except where such defects are the result of the gross negligence, fraud, criminal or willful action of the Contractor.

23. Functional Guarantees

23.1 The Contractor guarantees that the Facilities and all parts thereof shall attain the Functional Guarantees specified in the Technical Specifications, subject to and upon the conditions therein specified.

23.2 If, for reasons attributable to the Contractor, the minimum level of the Functional Guarantees specified in the Technical Specifications are not met either in whole or in part, the Contractor shall at its cost and expense make such changes, modifications and/or additions to the Plant or any part thereof as may be necessary to meet at least the minimum level of such Guarantees. The Contractor shall notify the Employer upon completion of the necessary changes, modifications and / or additions, and shall request the Employer to repeat the Guarantee Test until the minimum level of the Guarantees has

been met. If the Contractor eventually fails to meet the minimum level of Functional Guarantees, the Employer may consider termination of the Contract pursuant to GCC Sub-Clause 36.2.2 and recover the payments already made to the Contractor.

23.3 If, for reasons attributable to the Contractor, the Functional Guarantees specified in the Technical Specifications are not attained either in whole or in part, but the minimum level of the Functional Guarantees specified in the Technical Specifications is met, the Contractor shall, at the Contractor's option, either

(a) make such changes, modifications and/or additions to the Facilities or any part thereof that are necessary to attain the Functional Guarantees at its cost and expense within a mutually agreed time and shall request the Employer to repeat the Guarantee Test, or

(b) pay liquidated damages to the Employer in respect of the failure to meet the Functional Guarantees in accordance with the provisions in the **SCC**.

23.4 In case the Employer exercises its option to accept the equipment after levy of liquidated damages, the payment of liquidated damages under GCC Sub-Clause 23.3, upto the limitation of liability specified in the **SCC**, shall completely satisfy the Contractor's guarantees under GCC Sub-Clause 23.3, and the Contractor shall have no further liability whatsoever to the Employer in respect thereof. Upon the payment of such liquidated damages by the Contractor, the Project Manager shall issue the Operational Acceptance Certificate for the Facilities or any part thereof in respect of which the liquidated damages have been so paid.

24. Equipment Performance Guarantees

24.1 The Contractor guarantees that the Equipments, named in the **SCC**, shall attain the rating and performance requirements specified in Appendix – 8 (Guarantees, Liquidated Damages for Non – Performance) to the Contract Agreement, subject to and upon the conditions therein specified.

24.2 If the guarantees specified in Appendix – 8 (Guarantees, Liquidated Damages for Non – Performance) to the Contract Agreement are not established, then the Employer shall, at the Employer's discretion either

(a) reject the equipment, or

(b) accept the equipment after assessing liquidated damages in accordance with the provision in the **SCC** against the Contractor and such amounts shall be deducted from the Contract Price or otherwise recovered from the Contractor.

24.3 In case the Employer exercises its option to reject the equipment, the Contractor shall at its cost and expense make such changes, modifications and/or additions to the equipment or any part thereof as may be necessary to meet the specified guarantees. The Contractor shall notify the Employer upon completion of the necessary changes, modifications and/or additions, and shall request the Employer to repeat the Test until the level of the specified guarantee has been met.

24.4 Whenever the Employer exercises its option to accept the equipment after levy of liquidated damages, the payment of liquidated damages under GCC Sub-Clause 24.2, upto the limitation of liability specified in the **SCC**, shall completely satisfy the Contractor's guarantees under GCC Sub-Clause 24.2, and the Contractor shall have no further liability whatsoever to the Employer in respect thereof.

25. Patent Indemnity

25.1 The Contractor shall, subject to the Employer's compliance with GCC Sub-Clause 25.2, indemnify and hold harmless the Employer and its employees and officers from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of whatsoever nature, including attorney's fees and expenses, which the Employer may suffer as a result of any infringement or alleged infringement of any patent, utility model, registered design, trademark, copyright or other intellectual property right registered or otherwise existing at the date of the Contract by reason of: (a) the installation of the Facilities by the Contractor or the use of the Facilities in the country where the Site is located; and (b) the sale of the products produced by the Facilities in any country.

Such indemnity shall not cover any use of the Facilities or any part thereof other than for the purpose indicated by or to be reasonably inferred from the Contract, any infringement resulting from the use of the Facilities or any part thereof, or any products produced thereby in association or combination with any other equipment, plant or materials not supplied by the Contractor, pursuant to the Contract Agreement.

25.2 If any proceedings are brought or any claim is made against the Employer arising out of the matters referred to in GCC Sub-Clause 25.1, the Employer

shall promptly give the Contractor a notice thereof, and the Contractor may at its own expense and in the Employer's name conduct such proceedings or claim and any negotiations for the settlement of any such proceedings or claim. If the Contractor fails to notify the Employer within twenty-eight (28) days after receipt of such notice that it intends to conduct any such proceedings or claim, then the Employer shall be free to conduct the same on its own behalf. Unless the Contractor has so failed to notify the Employer within the twenty-eight (28) day period, the Employer shall make no admission that may be prejudicial to the defense of any such proceedings or claim.

The Employer shall, at the Contractor's request, afford all available assistance to the Contractor in conducting such proceedings or claim, and shall be reimbursed by the Contractor for all reasonable expenses incurred in so doing.

- 25.3 The Employer shall indemnify and hold harmless the Contractor and its employees, officers and Subcontractors from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of whatsoever nature, including attorney's fees and expenses, which the Contractor may suffer as a result of any infringement or alleged infringement of any patent, utility model, registered design, trademark, copyright or other intellectual property right registered or otherwise existing at the date of the Contract arising out of or in connection with any design, data, drawing, specification, or other documents or materials provided or designed by or on behalf of the Employer.

26. Limitation of Liability

- 26.1 Except in cases of gross negligence or willful misconduct,
- (a) the Contractor and the Employer shall not be liable to the other party for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, provided that this exclusion shall not apply to any obligation of the Contractor to pay liquidated damages to the Employer and
 - (b) the aggregate liability of the Contractor to the Employer, whether under the Contract, in tort or otherwise, shall not exceed the total Contract Price, provided that this limitation shall not apply to the cost of repairing or replacing defective equipment, or to any obligation of the Contractor to indemnify the Employer with respect to patent infringement.

G. Risk Distribution

27. Transfer of Ownership

- 27.1 Ownership of the Plant and Equipment (including spare parts) to be imported into India shall be transferred to the Employer upon loading on to the mode of transport to be used to convey the Plant and Equipment from the country of origin to that country and upon endorsement of the dispatch documents in favour of the Employer.
- 27.2 Ownership of the Plant and Equipment (including spare parts) procured in India, shall be transferred to the Employer upon loading on to the mode of transport to be used to carry the Plant and Equipment from the works to the site and upon endorsement of the despatch documents in favour of the Employer.
- 27.3 Ownership of the Contractor's Equipment used by the Contractor and its Subcontractors in connection with the Contract shall remain with the Contractor or its Subcontractors.
- 27.4 Ownership of any Plant and Equipment in excess of the requirements for the Facilities shall revert to the Contractor upon Completion of the Facilities or at such earlier time when the Employer and the Contractor agree that the Plant and Equipment in question are no longer required for the Facilities provided quantity of any Plant and Equipment specifically stipulated in the Contract shall be the property of the Employer whether or not incorporated in the Facilities.
- 27.5 Notwithstanding the transfer of ownership of the Plant and Equipment, the responsibility for care and custody thereof together with the risk of loss or damage thereto shall remain with the Contractor pursuant to GCC Clause 28 (Care of Facilities) hereof until Completion of the Facilities and Taking Over pursuant to GCC Clause 20 or the part thereof, if any, as per GCC Sub-Clause 1.1(e) in which such Plant and Equipment are incorporated.

28. Care of Facilities

- 28.1 The Contractor shall be responsible for the care and custody of the Facilities or any part thereof until the date of Taking Over Certificate pursuant to GCC Clause 20 or, where the Contract provides for Completion of the Facilities in

parts, until the date of Completion of the relevant part, and shall make good at its own cost any loss or damage that may occur to the Facilities or the relevant part thereof from any cause whatsoever during such period. The Contractor shall also be responsible for any loss or damage to the Facilities caused by the Contractor or its Subcontractors in the course of any work carried out, pursuant to GCC Clause 22. Notwithstanding the foregoing, the Contractor shall not be liable for any loss or damage to the Facilities or that part thereof caused by any use or occupation by the Employer or any third party (other than a Subcontractor) authorized by the Employer of any part of the Facilities.

29. Loss of or Damage to Property; Accident or Injury to Workers; Indemnification

29.1 The Contractor shall indemnify and hold harmless the Employer and its employees and officers from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of whatsoever nature, including attorney's fees and expenses, in respect of the death or injury of any person or loss of or damage to any property (other than the Facilities whether accepted or not), arising in connection with the supply and installation of the Facilities and by reason of the negligence of the Contractor or its Subcontractors, or their employees, officers or agents, except any injury, death or property damage caused by the negligence of the Employer, its contractors, employees, officers or agents.

29.2 If any proceedings are brought or any claim is made against the Employer that might subject the Contractor to liability under GCC Sub-Clause 29.1, the Employer shall promptly give the Contractor a notice thereof and the Contractor may at its own expense and in the Employer's name conduct such proceedings or claim and any negotiations for the settlement of any such proceedings or claim.

If the Contractor fails to notify the Employer within twenty-eight (28) days after receipt of such notice that it intends to conduct any such proceedings or claim, then the Employer shall be free to conduct the same on its own behalf. Unless the Contractor has so failed to notify the Employer within the twenty-eight (28) day period, the Employer shall make no admission that may be prejudicial to the defense of any such proceedings or claim.

The Employer shall, at the Contractor's request, afford all available assistance to the Contractor in conducting such proceedings or claim, and shall be reimbursed by the Contractor for all reasonable expenses incurred in so doing.

29.3 Notwithstanding anything in this Contract to the contrary, it is agreed that neither the Contractor nor the Employer shall be liable to the other party for loss of production, loss of profit, loss of use or any other indirect or consequential damages.

30. Insurance

30.1 To the extent specified in the corresponding Appendix - 3 (Insurance Requirements) to the Contract Agreement, the Contractor shall at its expense take out and maintain in effect, or cause to be taken out and maintained in effect, during the performance of the Contract, the insurances set forth below in the sums and with the deductibles and other conditions specified in the said Appendix. The identity of the insurers and the form of the policies shall be subject to the approval of the Employer, who should not unreasonably withhold such approval.

(a) Cargo Insurance During Transport

Covering loss or damage occurring while in transit from the Contractor's or Subcontractor's works or stores until arrival at the Site, to the Plant and Equipment (including spare parts therefor) and to the Contractor's Equipment.

(b) Installation All Risks Insurance

Covering physical loss or damage to the Facilities at the Site, occurring prior to Completion of the Facilities, with an extended maintenance coverage for the Contractor's liability in respect of any loss or damage occurring during the Defect Liability Period while the Contractor is on the Site for the purpose of performing its obligations during the Defect Liability Period.

(c) Third Party Liability Insurance

Covering bodily injury or death suffered by third parties (including the Employer's personnel) and loss of or damage to property occurring in connection with the supply and installation of the Facilities.

(d) Automobile Liability Insurance

Covering use of all vehicles used by the Contractor or its Subcontractors (whether or not owned by them) in connection with the execution of the Contract.

(e) Workers' Compensation

In accordance with the statutory requirements applicable in India.

(f) Employer's Liability

In accordance with the statutory requirements applicable in India.

(g) Other Insurances

Such other insurances as may be specifically agreed upon by the parties hereto as listed in the said the corresponding Appendix.

30.2 The Employer shall be named as co-insured under all insurance policies taken out by the Contractor pursuant to GCC Sub-Clause 30.1, except for the Third Party Liability, Workers' Compensation and Employer's Liability Insurances, and the Contractor's Subcontractors shall be named as co-insureds under all insurance policies taken out by the Contractor pursuant to GCC Sub-Clause 30.1 except for the Cargo Insurance During Transport, Workers' Compensation and Employer's Liability Insurances. All insurer's rights of subrogation against such co-insureds for losses or claims arising out of the performance of the Contract shall be waived under such policies.

30.3 The Contractor shall, in accordance with the provisions of the corresponding Appendix – 3 (Insurance Requirements) to the Contract Agreement, deliver to the Employer certificates of insurance (or copies of the insurance policies) as evidence that the required policies are in full force and effect. The certificates shall provide that no less than twenty-one (21) days' notice shall be given to the Employer by insurers prior to cancellation or material modification of a policy.

30.4 The Contractor shall ensure that, where applicable, its Subcontractor(s) shall take out and maintain in effect adequate insurance policies for their personnel and vehicles and for work executed by them under the Contract, unless such Subcontractors are covered by the policies taken out by the Contractor.

30.5 The Employer shall at its expense take out and maintain in effect during the performance of the Contract those insurances specified in the corresponding

Appendix – 3 (Insurance Requirements) to the Contract Agreement, in the sums and with the deductibles and other conditions specified in the said Appendix. The Contractor and the Contractor's Subcontractors shall be named as co-insureds under all such policies. All insurers' rights of subrogation against such co-insureds for losses or claims arising out of the performance of the Contract shall be waived under such policies. The Employer shall deliver to the Contractor satisfactory evidence that the required insurances are in full force and effect. The policies shall provide that not less than twenty-one (21) days' notice shall be given to the Contractor by all insurers prior to any cancellation or material modification of the policies. If so requested by the Contractor, the Employer shall provide copies of the policies taken out by the Employer under this GCC Sub-Clause 30.5.

- 30.6 If the Contractor fails to take out and/or maintain in effect the insurances referred to in GCC Sub-Clause 30.1, the Employer may take out and maintain in effect any such insurances and may from time to time deduct from any amount due the Contractor under the Contract any premium that the Employer shall have paid to the insurer, or may otherwise recover such amount as a debt due from the Contractor. If the Employer fails to take out and/or maintain in effect the insurances referred to in GCC 30.5, the Contractor may take out and maintain in effect any such insurances and may from time to time deduct from any amount due the Employer under the Contract any premium that the Contractor shall have paid to the insurer, or may otherwise recover such amount as a debt due from the Employer.
- 30.7 Unless otherwise provided in the Contract, the Contractor shall prepare and conduct all and any claims made under the policies effected by it pursuant to this GCC Clause 30, and the monies payable by any insurers under all the insurance except Third Party Liability Insurance, Workers' Compensation, and Employer's Liability, shall be paid to the joint account of the Employer and the Contractor as mutually agreed and such amounts paid shall be apportioned between the Employer and the Contractor in accordance with the respective responsibilities under the Contract. The Employer shall give to the Contractor all such reasonable assistance as may be required by the Contractor. With respect to insurance claims in which the Employer's interest is involved, the Contractor shall not give any release or make any compromise with the insurer without the prior written consent of the Employer. With respect to insurance claims in which the Contractor's interest is involved, the Employer shall not give any release or make any compromise with the insurer without the prior written consent of the Contractor.
- 30.8 Further all equipment and materials being supplied by Employer for the erection (as per Technical Specification) shall be kept insured by the

Contractor against any loss, damage, pilferage, theft, fire, etc. from the point of unloading up to the time of taking over by Employer including handling, transportation, storage, erection, testing and commissioning etc. The premium paid to the Insurance company by the Contractor for such insurance shall be reimbursed by Employer to the Contractor. The Contractor shall obtain competitive quotation for such insurance and shall take prior approval from Employer before taking the insurance. The insurable value of the equipment being supplied by Employer shall be intimated to the Contractor for arranging the insurance.

- 30.9 It will be the responsibility of the Contractor to lodge, pursue and settle all claims with the insurance company in case of any damage, loss, theft, pilferage or fire during execution of Contract and Employer shall be kept informed about it. The Contractor shall replace the lost/damaged materials promptly irrespective of the settlement of the claims by the underwriters and ensure that the work progress is as per agreed schedules. The losses, if any, in such replacement will have to be borne by the Contractor.

31. Change in Laws and Regulations

- 31.1 If, after the date seven (07) days prior to the date of Bid Opening, any law, regulation, ordinance, order or by-law having the force of law is enacted, promulgated, abrogated or changed in India (which shall be deemed to include any change in interpretation or application by the competent authorities) that subsequently affects the costs and expenses of the Contractor and/or the Time for Completion, the Contract Price shall be correspondingly increased or decreased, and/or the Time for Completion shall be reasonably adjusted to the extent that the Contractor has thereby been affected in the performance of any of its obligations under the Contract. However, these adjustments would be restricted to direct transactions between the Employer and the Contractor and not on procurement of raw materials, intermediary components etc. by the Contractor for which the Employer shall be the sole judge. Notwithstanding the foregoing, such additional or reduced costs shall not be separately paid or credited if the same has already been accounted for in the price adjustment provisions where applicable, in accordance with the Appendix-2 to the Contract Agreement.

32. Force Majeure

32.1 "Force Majeure" shall mean any event beyond the reasonable control of the Employer or of the Contractor, as the case may be, and which is unavoidable notwithstanding the reasonable care of the party affected, and shall include, without limitation, the following:

- (a) war, hostilities or warlike operations (whether war be declared or not), invasion, act of foreign enemy and civil war,
- (b) rebellion, revolution, insurrection, mutiny, usurpation of government, conspiracy, riot and civil commotion,
- (c) earthquake, landslide, volcanic activity, flood or cyclone, or other inclement weather condition, nuclear and pressure waves or other natural or physical disaster,

32.2 Neither party shall be considered to be in default or in breach of his obligations under the Contract to the extent that performance of such obligation is prevented by any circumstances of Force majeure, which arises after date of Notification of Award.

32.3 If either party is prevented, hindered or delayed from or in performing any of its obligations under the Contract by an event of Force Majeure, then it shall notify the other in writing of the occurrence of such event and the circumstances thereof within fourteen (14) days after the occurrence of such event.

32.4 The party who has given such notice shall be excused from the performance or punctual performance of its obligations under the Contract for so long as the relevant event of Force Majeure continues and to the extent that such party's performance is prevented, hindered or delayed. The Time for Completion shall be extended in accordance with GCC Clause 34.

H. Change in Contract Elements

33. Change in the Facilities

33.1 Introducing a Change

- 33.1.1 Subject to GCC Sub-Clauses 33.2.5 and 33.2.7, the Employer shall have the right to propose, and subsequently require, that the Project Manager order the Contractor from time to time during the performance of the Contract to make any change, modification, addition or deletion to, in or from the Facilities (hereinafter called "Change"), provided that such Change falls within the general scope of the Facilities and does not constitute unrelated work and that it is technically practicable, taking into account both the state of advancement of the Facilities and the technical compatibility of the Change envisaged with the nature of the Facilities as specified in the Contract.
- 33.1.2 The Contractor may from time to time during its performance of the Contract propose to the Employer (with a copy to the Project Manager) any Change that the Contractor considers necessary or desirable to improve the quality, efficiency or safety of the Facilities. The Employer may at its discretion approve or reject any Change proposed by the Contractor, provided that the Employer shall approve any Change proposed by the Contractor to ensure the safety of the Facilities.
- 33.1.3 Changes made necessary because of any default of the Contractor in the performance of its obligations under the Contract shall be not be deemed to be a Change, and such change shall not result in any adjustment of the Contract Price or the Time for Completion.
- 33.1.4 The procedure on how to proceed with and execute Changes is specified in GCC Sub-Clauses 33.2 and 33.3.
- 33.2 Changes Originating from Employer
- 33.2.1 The pricing of any Change shall, as far as practicable, be calculated in accordance with the rates and prices included in the Contract. If such rates and prices are inequitable, the parties thereto shall agree on specific rates for the valuation of the Change.
- 33.2.2 The Contract Price for (i) the items for which quantities have been indicated as lumpsum or lot or set and/or (ii) where the quantities are to be estimated by the Contractor shall remain constant unless there is change made in the Scope of Work by Employer. The quantities and unit prices (i) subsequently arrived while approving the Bill of Quantities (BOQ)/Billing breakup of lumpsum quantities/lot/Set and/or (ii) estimated by the Contractor shall be for on account payment purpose only. In case additional quantities, over and above the quantities in BOQ/billing breakup and /or estimated by the Contractor, are required for successful completion of the scope of work as per

Technical Specification, the Contractor shall execute additional quantities of these items for which no additional payment shall be made over and above the lumpsum Contract Price. In case quantities of these items supplied at site are in excess of that required for successful completion of scope of work, such additional quantities shall be the property of the Contractor and they shall be allowed to take back the same from the site for which no deduction from the lumpsum Contract Price shall be made. Further, in case actual requirement of quantities for successful completion of scope of work is less than the quantities identified in the approved BOQ /billing breakup and/or estimated by the Contractor, the lumpsum contract price shall remain unchanged and no deduction shall be made from the lumpsum price due to such reduction of quantities.

It shall be the responsibility of the Contractor to pay all statutory taxes, duties and levies to the concerned authorities for such surplus material which would otherwise have been, lawfully payable in case of non-deemed export contracts. The Contractor shall submit an indemnity bond to keep Employer harmless from any liability, before release of such material to the Contractor by Employer.

Set/Lot/Lumpsum shall be governed as per the requirement of the corresponding item description read in conjunction with relevant provisions of Technical Specifications and the Billing breakup referred to above shall be issued by the Employer based on Contractor's request, if and as may be required during the currency of the Contract.

- 33.2.3 If before or during the preparation of the Change Proposal it becomes apparent that the aggregate effect of compliance therewith and with all other Change Orders that have already become binding upon the Contractor under this GCC Clause 33 would be to increase or decrease the Contract Price as originally set forth in Article 2 (Contract Price and Terms of Payment) of the Contract Agreement by more than the percentage specified in **SCC**, the Employer and the Contractor shall mutually agree on specific rates for valuation of the Change beyond the specified percentage.
- 33.2.4 If rates and prices of any change are not available in the Contract, the parties thereto shall agree on specific rates for the valuation of the change and all matters therein related to the change. Based on the same, the Employer shall, if it intends to proceed with the Change, issue the Contractor with a Change Order.
- 33.2.5 The Employer shall issue the Contractor with a Change Order pursuant to GCC Sub-Clause 33.2 by way of amendment to the Contract or in any other

manner deemed appropriate. Even if the Employer and the Contractor cannot reach agreement on the price for the Change, an equitable adjustment to the Time for Completion, or any other matters related to the Change Proposal, the Employer may nevertheless instruct the Contractor to proceed with the Change by issue of a "Pending Agreement Change Order" ("Pending Agreement Amendment").

Upon receipt of a Pending Agreement Change Order, the Contractor shall immediately proceed with effecting the Changes covered by such Order. The parties shall thereafter attempt to reach agreement on the outstanding issues under the Change Proposal.

If the parties cannot reach agreement within sixty (60) days from the date of issue of the Pending Agreement Change Order, then the matter may be referred to the Arbitrator in accordance with the provisions of GCC Clause 38 & 39.

33.3 Changes Originating from Contractor

33.3.1 If the Contractor proposes a Change pursuant to GCC Sub-Clause 33.1.2, the Contractor shall submit to the Project Manager a written "Request for Change Proposal", giving reasons for the proposed Change and which shall include the following:

- (a) brief description of the Change
- (b) effect on the Time for Completion
- (c) estimated cost of the Change
- (d) effect on Functional Guarantees (if any)
- (e) effect on any other provisions of the Contract.

Upon receipt of the Request for Change Proposal, the parties shall follow the procedures outlined in GCC Sub-Clauses 33.2.1 and 33.2.5. However, should the Employer choose not to proceed, the Contractor shall not be entitled to recover the costs of preparing the Request for Change Proposal.

34. Extension of Time for Completion

34.1 The Time(s) for Completion specified in the SCC shall be extended if the Contractor is delayed or impeded in the performance of any of its obligations under the Contract by reason of any of the following:

- (a) any Change in the Facilities as provided in GCC Clause 33
- (b) any occurrence of Force Majeure as provided in GCC Clause 32
- (c) any suspension order given by the Employer under GCC Clause 35 hereof or reduction in the rate of progress pursuant to GCC Sub-Clause 35.2 or
- (d) any changes in laws and regulations as provided in GCC Clause 31 or
- (e) any other matter specifically mentioned in the Contract

by such period as shall be fair and reasonable in all the circumstances and as shall fairly reflect the delay or impediment sustained by the Contractor.

34.2 Except where otherwise specifically provided in the Contract, the Contractor shall submit to the Project Manager a notice of a claim for an extension of the Time for Completion, together with particulars of the event or circumstance justifying such extension as soon as reasonably practicable after the commencement of such event or circumstance. As soon as reasonably practicable after receipt of such notice and supporting particulars of the claim, the Employer and the Contractor shall agree upon the period of such extension. In the event that the Contractor does not accept the Employer's estimate of a fair and reasonable time extension, the Contractor shall be entitled to refer the matter to Arbitration, pursuant to GCC Sub-Clause 39.

34.3 The Contractor shall at all times use its reasonable efforts to minimize any delay in the performance of its obligations under the Contract.

35. Suspension

35.1 The Employer may request the Project Manager, by notice to the Contractor, to order the Contractor to suspend performance of any or all of its obligations under the Contract. Such notice shall specify the obligation of which performance is to be suspended, the effective date of the suspension and the reasons therefor. The Contractor shall thereupon suspend performance of such obligation (except those obligations necessary for the care or preservation of the Facilities) until ordered in writing to resume such performance by the Project Manager.

If, by virtue of a suspension order given by the Project Manager, other than by reason of the Contractor's default or breach of the Contract, the

Contractor's performance of any of its obligations is suspended for an aggregate period of more than ninety (90) days, then at any time thereafter and provided that at that time such performance is still suspended, the Contractor may give a notice to the Project Manager requiring that the Employer shall, within twenty-eight (28) days of receipt of the notice, order the resumption of such performance or request and subsequently order a change in accordance with GCC Clause 33, excluding the performance of the suspended obligations from the Contract.

If the Employer fails to do so within such period, the Contractor may, by a further notice to the Project Manager, elect to treat the suspension, where it affects a part only of the Facilities, as a deletion of such part in accordance with GCC Clause 33 or, where it affects the whole of the Facilities, as termination of the Contract under GCC Sub-Clause 36.1.

35.2 If the Contractor's performance of its obligations is suspended or the rate of progress is reduced pursuant to this GCC Clause 35, then the Time for Completion shall be extended in accordance with GCC Sub-Clause 34.1, and any and all additional costs or expenses incurred by the Contractor as a result of such suspension or reduction shall be paid by the Employer to the Contractor in addition to the Contract Price, except in the case of suspension order or reduction in the rate of progress by reason of the Contractor's default or breach of the Contract.

35.3 During the period of suspension, the Contractor shall not remove from the Site any Plant and Equipment, any part of the Facilities or any Contractor's Equipment, without the prior written consent of the Employer.

36. Termination

36.1 Termination for Employer's Convenience

36.1.1 The Employer may at any time terminate the Contract for any reason by giving the Contractor a notice of termination that refers to this GCC Sub-Clause 36.1.

36.1.2 Upon receipt of the notice of termination under GCC Sub-Clause 36.1.1, the Contractor shall either immediately or upon the date specified in the notice of termination

(a) cease all further work, except for such work as the Employer may specify in the notice of termination for the sole purpose of protecting

that part of the Facilities already executed, or any work required to leave the Site in a clean and safe condition

- (b) terminate all subcontracts, except those to be assigned to the Employer pursuant to paragraph (d) (ii) below
- (c) remove all Contractor's Equipment from the Site, repatriate the Contractor's and its Subcontractors' personnel from the Site, remove from the Site any wreckage, rubbish and debris of any kind, and leave the whole of the Site in a clean and safe condition
- (d) In addition, the Contractor, subject to the payment specified in GCC Sub-Clause 36.1.3, shall
 - (i) deliver to the Employer the parts of the Facilities executed by the Contractor up to the date of termination
 - (ii) to the extent legally possible, assign to the Employer all right, title and benefit of the Contractor to the Facilities and to the Plant and Equipment as of the date of termination, and, as may be required by the Employer, in any subcontracts concluded between the Contractor and its Subcontractors
 - (iii) deliver to the Employer all non-proprietary drawings, specifications and other documents prepared by the Contractor or its Subcontractors as at the date of termination in connection with the Facilities.

36.1.3 In the event of termination of the Contract under GCC Sub-Clause 36.1.1, the Employer shall pay to the Contractor the following amounts:

- (a) the Contract Price, properly attributable to the parts of the Facilities executed by the Contractor as of the date of termination
- (b) the costs reasonably incurred by the Contractor in the removal of the Contractor's Equipment from the Site and in the repatriation of the Contractor's and its Subcontractors' personnel
- (c) any amounts to be paid by the Contractor to its Subcontractors in connection with the termination of any subcontracts, including any cancellation charges

- (d) costs incurred by the Contractor in protecting the Facilities and leaving the Site in a clean and safe condition pursuant to paragraph (a) of GCC Sub-Clause 36.1.2
- (e) the cost of satisfying all other obligations, commitments and claims that the Contractor may in good faith have undertaken with third parties in connection with the Contract and that are not covered by paragraphs (a) through (d) above.

36.2 Termination for Contractor's Default

36.2.1 The Employer, without prejudice to any other rights or remedies it may possess, may terminate the Contract forthwith in the following circumstances by giving a notice of termination and its reasons therefor to the Contractor, referring to this GCC Sub-Clause 36.2:

- (a) if the Contractor becomes bankrupt or insolvent, has a receiving order issued against it, compounds with its creditors, or, if the Contractor is a corporation, a resolution is passed or order is made for its winding up (other than a voluntary liquidation for the purposes of amalgamation or reconstruction), a receiver is appointed over any part of its undertaking or assets, or if the Contractor takes or suffers any other analogous action in consequence of debt
- (b) if the Contractor assigns or transfers the Contract or any right or interest therein in violation of the provision of GCC Clause 37.
- (c) if the Contractor, in the judgment of the Employer has engaged in corrupt or fraudulent practices in competing for or in executing the Contract.

For the purpose of this Sub-Clause:

"corrupt practice" is the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;

"fraudulent practice" is any act or omission, including a misrepresentation, that knowingly or recklessly misleads or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;

“collusive practice” is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;

“coercive practice” is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;

“obstructive practice” is

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

or

(bb) acts intended to materially impede the exercise of the Employer’s inspection and audit rights.

In persuasions of its policy, the Employer will sanction a firm or individual, including declaring ineligible, either indefinitely or for a stated period of time, to be awarded a contract if it at any time determines that the firm has, directly or through an agent, engaged in corrupt, fraudulent, collusive, coercive or obstructive practices in competing for, or in executing, a contract.

36.2.2 If the Contractor

- (a) has abandoned or repudiated the Contract
- (b) has without valid reason failed to commence work on the Facilities promptly or has suspended (other than pursuant to GCC Sub-Clause 35.2) the progress of Contract performance for more than twenty-eight (28) days after receiving a written instruction from the Employer to proceed
- (c) persistently fails to execute the Contract in accordance with the Contract or persistently neglects to carry out its obligations under the Contract without just cause

- (d) refuses or is unable to provide sufficient materials, services or labor to execute and complete the Facilities in the manner specified in the program furnished under GCC Sub-Clause 14.2 at rates of progress that give reasonable assurance to the Employer that the Contractor can attain Completion of the Facilities by the Time for Completion as extended,

then the Employer may, without prejudice to any other rights it may possess under the Contract, give a notice to the Contractor stating the nature of the default and requiring the Contractor to remedy the same. If the Contractor fails to remedy or to take steps to remedy the same within fourteen (14) days of its receipt of such notice, then the Employer may terminate the Contract forthwith by giving a notice of termination to the Contractor that refers to this GCC Sub-Clause 36.2.

36.2.3 Upon receipt of the notice of termination under GCC Sub-Clauses 36.2.1 or 36.2.2, the Contractor shall, either immediately or upon such date as is specified in the notice of termination,

- (a) cease all further work, except for such work as the Employer may specify in the notice of termination for the sole purpose of protecting that part of the Facilities already executed, or any work required to leave the Site in a clean and safe condition
- (b) terminate all subcontracts, except those to be assigned to the Employer pursuant to paragraph (d) below
- (c) deliver to the Employer the parts of the Facilities executed by the Contractor up to the date of termination
- (d) to the extent legally possible, assign to the Employer all right, title and benefit of the Contractor to the Facilities and to the Plant and Equipment as of the date of termination, and, as may be required by the Employer, in any subcontracts concluded between the Contractor and its Subcontractors
- (e) deliver to the Employer all drawings, specifications and other documents prepared by the Contractor or its Subcontractors as of the date of termination in connection with the Facilities.

36.2.4 The Employer may enter upon the Site, expel the Contractor, and complete the Facilities itself or by employing any third party. The Employer may, to the exclusion of any right of the Contractor over the same, take over and use with

the payment of a fair rental rate to the Contractor, with all the maintenance costs to the account of the Employer and with an indemnification by the Employer for all liability including damage or injury to persons arising out of the Employer's use of such equipment, any Contractor's Equipment owned by the Contractor and on the Site in connection with the Facilities for such reasonable period as the Employer considers expedient for the supply and installation of the Facilities.

Upon completion of the Facilities or at such earlier date as the Employer thinks appropriate, the Employer shall give notice to the Contractor that such Contractor's Equipment will be returned to the Contractor at or near the Site and shall return such Contractor's Equipment to the Contractor in accordance with such notice. The Contractor shall thereafter without delay and at its cost remove or arrange removal of the same from the Site.

36.2.5 Subject to GCC Sub-Clause 36.2.6, the Contractor shall be entitled to be paid the Contract Price attributable to the Facilities executed as of the date of termination, the value of any unused or partially used Plant and Equipment on the Site, and the costs, if any, incurred in protecting the Facilities and in leaving the Site in a clean and safe condition pursuant to paragraph (a) of GCC Sub-Clause 36.2.3. Any sums due to the Employer from the Contractor accruing prior to the date of termination shall be deducted from the amount to be paid to the Contractor under this Contract.

36.2.6 If the Employer completes the Facilities, the cost of completing the Facilities by the Employer shall be determined.

If the sum that the Contractor is entitled to be paid, pursuant to GCC Sub-Clause 36.2.5, plus the reasonable costs incurred by the Employer in completing the Facilities, exceeds the Contract Price or the entire Facilities if entire Facilities have been completed or the price for part of the Facilities if part of the Facilities have been completed, the Contractor shall be liable for such excess.

If such excess is greater than the sums due the Contractor under GCC Sub-Clause 36.2.5, the Contractor shall pay the balance to the Employer, and if such excess is less than the sums due the Contractor under GCC Sub-Clause 36.2.5, the Employer shall pay the balance to the Contractor. For facilitating such payment the Employer shall encash the Bank Guarantees of the Contractor available with the Employer and retain such other payments due

to the Contractor under the Contract in question or any other Contract that the Employer may have with the Contractor.

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

36.3 In this GCC Clause 36, the expression "Facilities executed" shall include all work executed, Installation Services provided, and all Plant and Equipment acquired (or subject to a legally binding obligation to purchase) by the Contractor and used or intended to be used for the purpose of the Facilities, up to and including the date of termination.

36.4 In this GCC Clause 36, in calculating any monies due from the Employer to the Contractor, account shall be taken of any sum previously paid by the Employer to the Contractor under the Contract, including any advance payment paid pursuant to the corresponding Appendix (Terms and Procedures of Payment) to the Contract Agreement.

37. Assignment

37.1 Neither the Employer nor the Contractor shall, without the express prior written consent of the other party (which consent shall not be unreasonably withheld), assign to any third party the Contract or any part thereof, or any right, benefit, obligation or interest therein or there under, except that the Contractor shall be entitled to assign either absolutely or by way of charge any monies due and payable to it or that may become due and payable to it under the Contract.

Resolution of Disputes

38. Settlement of Disputes

38.1 If any dispute of any kind whatsoever shall arise between the Employer and the Contractor in connection with or arising out of the Contract, including without prejudice to the generality of the foregoing, any question regarding its existence, validity or termination, or the execution of the Facilities, whether during the progress of the Facilities or after their completion and whether before or after the termination, abandonment or breach of the Contract, the parties shall seek to resolve any such dispute or difference, to the extent possible, amicably by mutual consultation.

- 38.2 If the parties fail to resolve such a dispute or difference by mutual consultation at the execution site level, then the dispute shall be referred by the Contractor to the Project Manager, who, within a period of thirty (30) days after being requested by Contractor to do so, shall give written notice of his decision.
- 38.2.1 The decision/instruction of the Project Manager shall be deemed to have been accepted by the Contractor unless notified by the Contractor of his intention to refer the matter for Arbitration within thirty (30) days of such decision/instruction.
- 38.2.2 In the event the Project Manager fails to notify his decision as aforesaid within thirty (30) days, the Contractor, if he intends to go for Arbitration, shall notify his intention to the Project Manager within 30 days of expiry of the first mentioned period of thirty days failing which it shall be deemed that there are no dispute or difference between the Employer and the Contractor.
- 38.3 In case of dispute or difference between the Employer and the Contractor, if the Employer intends to go for Arbitration, he shall notify such intention to the Contractor.

39. Arbitration

- 39.1 All disputes or differences in respect of which the decision, if any, of the Project Manager and/or the Head of the Implementing Authority has not become final or binding as aforesaid shall be settled by arbitration in the manner provided herein below:
- 39.2 The arbitration shall be conducted by three arbitrators, one each to be nominated by the Contractor and the Employer and the third to be appointed by both the arbitrators in accordance with the Indian Arbitration Act. If either of the parties fails to appoint its arbitrator within sixty (60) days after receipt of a notice from the other party invoking the Arbitration clause, the arbitrator appointed by the party invoking the arbitration clause shall become the sole arbitrator to conduct the arbitration.
- 39.3 The language of the arbitration proceedings and that of the documents and communications between the parties shall be English. The arbitration shall be conducted in accordance with the provisions of the Indian Arbitration and Conciliation Act, 1996 or any statutory modification thereof. The venue of arbitration shall be New Delhi.

- 39.4 The decision of the majority of the arbitrators shall be final and binding upon the parties. In the event of any of the aforesaid arbitrators dying, neglecting, resigning or being unable to act for any reason, it will be lawful for the party concerned to nominate another arbitrator in place of the outgoing arbitrator.
- 39.5 During settlement of disputes and arbitration proceedings, both parties shall be obliged to carry out their respective obligations under the Contract.

----- **End of Section-IV (GCC)** -----

SECTION - V

SPECIAL CONDITIONS OF CONTRACT (SCC)

SPECIAL CONDITIONS OF CONTRACT (SCC)

The following bid specific data for the Plant and Equipment to be procured shall amend and/or supplement the provisions in the General Conditions of Contract (GCC)

SI. No.	GCC Clause Ref. No.	Amendment/Supplement to GCC
1.	GCC 1.1(o)	<p>Supplementing Sub-Clause GCC 1.1(o)</p> <p>The Employer is:</p> <p>Teestavalley Power Transmission Limited, Head Office: 2nd Floor, Vijaya Building, Barakhamba Road, New Delhi – 110001</p> <p>Kind Attn. : Mr. Varun Dayal, Asst. Manager Telephone No.:-011-46529740</p>
2.	GCC 1.1(w)	<p>Supplementing Sub-Clause GCC 1.1(w)</p> <p>The Owner is:</p> <p>Teestavalley Power Transmission Limited, Head Office: 2nd Floor, Vijaya Building, Barakhamba Road, New Delhi – 110001</p> <p>Kind Attn. : Mr. Varun Dayal, Asst. Manager Telephone No.:- 011-46529740</p>
3.	GCC 1.1 (ee)	<p>Supplementing Sub-Clause GCC 1.1(ee)</p> <p>Time for Completion: Five (5) months from the date of NOA</p>
4.	GCC 2.1	<p>Addition of following new Sub-Clauses after GCC 2.1</p> <p>GCC 2.1.1 The Contracts to be entered into with the successful Bidder shall be as under :</p> <p style="padding-left: 40px;">- Scope of work includes but not limited to providing of all services necessary for the execution of Earth Cutting Works to maintain statutory electrical clearances for 400kV D/C Quad Teesta III HEP – Kishanganj Transmission Line inter-alia, including transportation,</p>

Sl. No.	GCC Clause Ref. No.	Amendment/Supplement to GCC																																				
		<p data-bbox="609 277 1432 663">provide & transport all materials & other related works including disposal of excavated muck at suitable locations, insurance to your men, materials & equipment, insurance covering physical loss or damage to the Facilities or any third parties at the Site, occurring prior to Completion of the Facilities as indicated in conditions of contract and also put up detailed proposals for protection walls, required after Earth Cutting. However, construction of the protection walls will not be in the scope of the contractor</p> <p data-bbox="609 709 1432 779">The tentative quantity of excavation at various locations is tabulated below:</p> <table border="1" data-bbox="623 825 1417 1230"> <thead> <tr> <th data-bbox="630 833 727 894">Sl. No.</th> <th data-bbox="727 833 954 894">Span</th> <th data-bbox="954 833 1094 894">Unit</th> <th data-bbox="1094 833 1411 894">Volume of Earth Cutting Required</th> </tr> </thead> <tbody> <tr> <td data-bbox="630 894 727 926">1</td> <td data-bbox="727 894 954 926">90/0 – 91/0</td> <td data-bbox="954 894 1094 926">Cu.m</td> <td data-bbox="1094 894 1411 926">1540</td> </tr> <tr> <td data-bbox="630 926 727 957">2</td> <td data-bbox="727 926 954 957">91/1 – 93/0</td> <td data-bbox="954 926 1094 957">Cu.m</td> <td data-bbox="1094 926 1411 957">2250</td> </tr> <tr> <td data-bbox="630 957 727 989">3</td> <td data-bbox="727 957 954 989">102/0 – 104/0</td> <td data-bbox="954 957 1094 989">Cu.m</td> <td data-bbox="1094 957 1411 989">475</td> </tr> <tr> <td data-bbox="630 989 727 1073">4</td> <td data-bbox="727 989 954 1073">110A/0 – 111/0</td> <td data-bbox="954 989 1094 1073">Cu.m</td> <td data-bbox="1094 989 1411 1073">8300</td> </tr> <tr> <td data-bbox="630 1073 727 1104">5</td> <td data-bbox="727 1073 954 1104">112/0 – 113/0</td> <td data-bbox="954 1073 1094 1104">Cu.m</td> <td data-bbox="1094 1073 1411 1104">690</td> </tr> <tr> <td data-bbox="630 1104 727 1136">6</td> <td data-bbox="727 1104 954 1136">140/1 – 140/2</td> <td data-bbox="954 1104 1094 1136">Cu.m</td> <td data-bbox="1094 1104 1411 1136">60</td> </tr> <tr> <td data-bbox="630 1136 727 1167">7</td> <td data-bbox="727 1136 954 1167">144/0 – 144/1</td> <td data-bbox="954 1136 1094 1167">Cu.m</td> <td data-bbox="1094 1136 1411 1167">800</td> </tr> <tr> <td data-bbox="630 1167 727 1220"></td> <td data-bbox="727 1167 954 1220">Total</td> <td data-bbox="954 1167 1094 1220">Cu.m</td> <td data-bbox="1094 1167 1411 1220">14115</td> </tr> </tbody> </table> <p data-bbox="609 1276 1432 1745">Schedule of Quantities are attached in Volume III - Bid Forms & Price Schedules. Quantities may vary based on actual requirement. Exact number of walls etc & quantity of the items necessary for the completion of the scope of work, shall be jointly finalized by the successful bidder and site in-charge of TPTL before commencement of construction works. JMC (Joint Measurement Certificate) for every month after execution of work is to be provided. TPTL reserve all rights to increase or decrease the quantity based on site requirements. This document will become an integral part of contract document while execution of contract agreement.</p> <p data-bbox="516 1871 841 1902">GCC 2.1.2 (Deleted)</p>	Sl. No.	Span	Unit	Volume of Earth Cutting Required	1	90/0 – 91/0	Cu.m	1540	2	91/1 – 93/0	Cu.m	2250	3	102/0 – 104/0	Cu.m	475	4	110A/0 – 111/0	Cu.m	8300	5	112/0 – 113/0	Cu.m	690	6	140/1 – 140/2	Cu.m	60	7	144/0 – 144/1	Cu.m	800		Total	Cu.m	14115
Sl. No.	Span	Unit	Volume of Earth Cutting Required																																			
1	90/0 – 91/0	Cu.m	1540																																			
2	91/1 – 93/0	Cu.m	2250																																			
3	102/0 – 104/0	Cu.m	475																																			
4	110A/0 – 111/0	Cu.m	8300																																			
5	112/0 – 113/0	Cu.m	690																																			
6	140/1 – 140/2	Cu.m	60																																			
7	144/0 – 144/1	Cu.m	800																																			
	Total	Cu.m	14115																																			

Sl. No.	GCC Clause Ref. No.	Amendment/Supplement to GCC
		<p data-bbox="516 310 1421 468">GCC 2.1.3 The Contract will be signed in two originals and the Contractor shall be provided with one signed original and the rest will be retained by the Employer.</p> <p data-bbox="516 510 1421 699">GCC 2.1.4 The Contractor shall provide free of cost to the Employer all the engineering data, drawing and descriptive materials submitted with the bid, in at least two (2) copies to form a part of the Contract immediately after Notification of Award.</p> <p data-bbox="516 741 1421 930">GCC 2.1.5 Subsequent to signing of the Contract, the Contractor at his own cost shall provide the Employer with at least Twenty (20) true copies of Contract Agreement within fifteen (15) days after signing of the Contract.</p>
6.	GCC 9.2	Deleted as Advance Payment is not applicable
7.	GCC 20.2.1	Deleted as Guarantee Tests are not applicable
8.	GCC 20.2.2.1 (II)	Deleted as Functional Guarantees are not applicable
	GCC 22.2	<p data-bbox="516 1192 1230 1224">Replace the existing provisions with the following:</p> <p data-bbox="516 1266 1421 1339">The Defect Liability Period shall be Twelve (12) months from the date of Completion of all works under this package.</p> <p data-bbox="516 1381 1421 1854">If during the Defect Liability Period any defect should be found in the design, engineering, materials and workmanship of the Plant and Equipment supplied or of the work executed by the Contractor, the Contractor shall promptly, in consultation and agreement with the Employer regarding appropriate remedying of the defects, and at its cost, repair, replace or otherwise make good (as the Contractor shall, at its discretion, determine) such defect as well as any damage to the Facilities caused by such defect. The Contractor shall not be responsible for the repair, replacement or making good of any defect or of any damage to the Facilities arising out of or resulting from any of the following causes:</p>

Sl. No.	GCC Clause Ref. No.	Amendment/Supplement to GCC
		(a) improper operation or maintenance of the Facilities by the Employer (b) operation of the Facilities outside specifications provided in the Contract (c) normal wear and tear.
9.	GCC 23	Deleted as Functional Guarantees are not applicable
10.	GCC 24	Deleted as Liquidated Damages for Non-Performance of Equipme are not applicable
11.	GCC 33.2.2.	Deleted as not applicable
12.	GCC 33.2.3	Supplementing Clause GCC 33.2.3 Percentage for the Change Proposal under this Clause shall limited to Fifteen (15) percent.

----- **End of Section-V (SCC)** -----

SECTION - VI

SAMPLE FORMS AND PROCEDURES (FORMS)

SAMPLE FORMS AND PROCEDURES (FORMS)

Preamble

This Section (Section –VI) of the bidding documents [named as Sample Forms and Procedures (FORMS)] provides proforma to be used by the bidders at the time of their bid preparation and by the Contractor subsequent to the award of Contract.

The Bidder shall complete, sign and submit with its bid the relevant FORMS to be used unamended, in accordance with the requirements included in the Bidding Documents.

The Bidder shall provide the Bid Security, either in the form included hereafter or in another form acceptable to the Employer, pursuant to the provisions in the instructions to Bidders.

The Form of Contract Agreement shall be used unamended, except for the need to complete Article 1.1 (Contract Documents), as appropriate and as may be required to suit the specific requirement of the Contract. The form shall also include the Appendices listed, as required, which should be completed according to the instructions for their completion provided at the beginning of each Appendix. The Price Schedule deemed to form part of the contract shall be modified according to any corrections or modifications to the accepted bid resulting from price corrections, pursuant to the provisions of the Instructions to Bidders.

The Performance Security(ies) and Bank Guarantee for Advance Payment forms should not be completed by the bidders at the time of their bid preparation. Only the successful Bidder will be required to provide the Performance Security(ies) and Bank Guarantee for Advance Payment, according to one of the forms indicated herein or in another form acceptable to the Employer and pursuant to the provisions of the General and Special Conditions of Contract, respectively.

Depending on specific facts and circumstances related to the Bid, other specific agreement, if any, and the contract, the text of the Forms herein may need to be modified to some extent. The Employer reserves the right to make such modifications in conformity with such specific facts and circumstances and rectify and consequent discrepancies, if any. However, modifications, if any, to the text of the Forms that may be required in the opinion of the Bidder/Contractor shall be effected only if the same is approved by the Employer. The Employer's decision in this regard shall be final and binding.

1. BID FORMS AND PRICE SCHEDULES

1.1 Bid Form

Please see Volume – III.

1.2 Price Schedule

Please see Volume - III

2. BID SECURITY FORM

(To be stamped in accordance with Stamp Act, the Non-Judicial Stamp Paper should be in the name of the issuing Bank)

Bank Guarantee No.:

Date:

Name of the Package:

Specification No.:

To: *(insert Name and Address of Employer)*

WHEREAS M/s. *(insert name of Bidder)*..... having its Registered/Head Office at *(insert address of the Bidder)* (hereinafter called "the Bidder") has submitted its Bid for the performance of the above-named Contract (hereinafter called "the Bid")

KNOW ALL PERSONS by these present that WE *(insert name & address of the issuing bank)* having its Registered/Head Office at*(insert address of registered office of the bank)*..... (hereinafter called "the Bank"), are bound unto*(insert name of Employer)*..... (hereinafter called "the Employer") in the sum of*(insert amount of Bid Security in figures & words)*..... for which payment well and truly to be made to the said Employer, the Bank binds itself, its successors and assigns by these presents.

Sealed with the Common Seal of the said Bank this day of 20....

THE CONDITIONS of this obligation are:

- (1) If the Bidder withdraws its bid during the period of bid validity specified by the Bidder in the Bid Form; or
- (2) In case the Bidder does not withdraw the deviations proposed by him, if any, at the cost of withdrawal stated by him in the bid; or
- (3) If a Bidder does not accept the corrections to arithmetical errors identified during preliminary evaluation of his bid pursuant to ITB Clause 32.2; or
- (4) If, as per the requirement of Qualification Requirements the Bidder is required to submit a Deed of Joint Undertaking and he fails to submit the same, duly attested by Notary Public of the place(s) of the respective executant(s), within ten days from the date of intimation of post – bid discussion; or

- (5) in the case of a successful Bidder, if the Bidder fails within the specified time limit
 - (i) to sign the Contract Agreement, in accordance with ITB Clause 42, or
 - (ii) to furnish the required performance security, in accordance with ITB Clause 43.
- (6) In any other case specifically provided for in ITB.

WE undertake to pay to the Employer up to the above amount upon receipt of its first written demand, without the Employer having to substantiate its demand, provided that in its demand the Employer will note that the amount claimed by it is due to it, owing to the occurrence of any of the above-named CONDITIONS or their combination, and specifying the occurred condition or conditions.

This guarantee will remain in full force up to and including (*insert date, which shall be the date 30 days after the period of bid validity*)....., and any demand in respect thereof must reach the Bank not later than the above date.

For and on behalf of the Bank

.....
(Signature)

in the capacity of

.....
Common Seal of the Bank

Note: In case the bid is submitted by a Joint Venture, the bid security shall be in the name of the Joint Venture and not in the name of the Lead Partner or any other Partner(s) of the Joint Venture.

**3a. FORM OF NOTIFICATION BY THE EMPLOYER TO THE BANK
(Applicable for Forfeiture of Bank Guarantee)**

To: *(insert Name and Address of the issuing Bank)*

Ref.: Forfeiture of Bid Security Amount against Bank Guarantee No.
dated for, issued by you on behalf of M/s.*(insert name of the Bidder)*

Dear Sirs,

Please refer to the subject Bank Guarantee executed by you in our favour for as Bid Security for the bid submitted by M/s.*(insert name of the Bidder)* against *(insert name of the Package)* ; Specification No.

As per the terms of the said guarantee, the bank has guaranteed and undertaken to pay immediately on demand by the Employer the amount of without any reservation, protest, demur and recourse. Further, any demand made by the Employer shall be conclusive and binding on the Bank irrespective of any dispute or difference raised by the Bidder.

In terms of the said guarantee, we hereby submit our claim/demand through this letter for remittance of Bid Security amount to *(insert name of the Employer)* owing to the occurrence of the condition referred to at Sl. No. The Bank is requested to remit the full guaranteed sum towards proceeds of the bid security in the form of Demand Draft in favour of '*.... (insert name of the Employer)*', payable at*(insert place of the Employer)....*'.

Thanking you,

For.....(Name of the Employer)

(AUTHORISED SIGNATORY)

Copy to:
.....*(Registered Office of the Bank)....*

3b. FORM OF NOTIFICATION BY THE EMPLOYER TO THE BANK
(Applicable for conditional claim pending extension of Bank Guarantee by the Bidder)

To: *(insert Name and Address of the issuing Bank)*

Ref.: Conditional Claim against Bank Guarantee No. dated
for valid up to issued by you on behalf of M/s.
.....*(insert name of the Bidder)*

Dear Sirs,

Please refer to the subject Bank Guarantee executed by you in our favour on behalf of M/s.*(insert name of the Bidder)*, who have submitted this Bank Guarantee to us towards Bid Security against *(insert name of the Package)* ; Specification No.

We, *(insert name of the Employer)* do hereby request you to lodge our claim/demand against the subject Bank Guarantee for full guaranteed sum. Kindly note that this claim/demand against the subject Bank Guarantee is without any further notice in case the amendment to Bank Guarantee No. dated extending its validity upto is not got arranged by*(insert name of the Bidder)* in our favour and are not received by us upto In such an event you are requested to remit the full guaranteed amount in terms of the subject guarantee in its letter and spirit and proceeds of this Bank Guarantee shall be forwarded to us in form of demand draft in favour of '.... *(insert name of the Employer)*, payable at*(insert place of the Employer)*....'.

This is without prejudice to our right under this guarantee and under the law.

Thanking you,

For.....*(Name of the Employer)*

(AUTHORISED SIGNATORY)

Copy to:
(insert Name and Address of the Bidder)

- You are requested to do the needful so that the amendment to the subject Bank Guarantee extending the validity up to is received by us by

4. FORM OF 'NOTIFICATION OF AWARD OF CONTRACT'

4a. (Deleted)

**4b. FORM OF 'NOTIFICATION OF AWARD OF CONTRACT' FOR
INSTALLATION OF PLANT AND EQUIPMENT**

Ref. No. :

Date :

.....(insert Contractor's Name & Address).....

.....

.....

.....

Attn : Mr.....

Sub. : Notification of Award for Services Contract for (insert name of the
Package) Specification No.: Domestic Competitive
Bidding. (Project Funding: Domestic).

Dear Sir,

1.0 REFERENCE

This has reference to the following:

1.1 Our Invitation for Bids (IFB) dated

1.2 Bidding documents for the subject package issued to you vide our letter Ref. No.
..... dated, comprising the following:

a) Conditions of Contract Volume-I
(Document Code No.)

b) Technical Specifications Volume-II
(Document Code No.)

c) Bid Form, Price Schedules Volume-III
& Technical Data Sheets
(Document Code No.)

1.2.1 Amendment/Errata No. to Bidding Documents issued to you vide our letter
no. dated
(Applicable only if any Errata/Amendment to the Bidding Documents has been issued
subsequently)

1.2.2 Clarifications to the Bidding Documents, pursuant to pre-bid conference held on issued to you vide our letters no. dated (*Use as applicable*)

(Applicable only if any clarification to the Bidding Documents has been issued subsequently)

(INCLUDE AS FURTHER SUB-PARAGRAPHS ANY OTHER CORRESPONDENCE MADE TO THE BIDDER AFTER ISSUANCE OF BIDDING DOCUMENTS UP TO BID OPENING)

1.3 Your Bid submitted for the subject package under Proposal reference no. dated alongwith discount letter no. dated, was opened on (*Use as applicable*)

1.4 Post bid discussions we had with you on various dates from to resulting into the Minutes of Meeting/ Record Notes of Post Bid Discussions enclosed as APPENDIX (NOA)-1 with this Notification of Award.

2.0 **AWARD OF CONTRACT AND ITS SCOPE**

2.1 We confirm having accepted your Bid of M/s. (referred to at para 1.3 above) read in conjunction with all the specifications, terms & conditions of the Bidding Documents (referred to at para 1.2, 1.2.1 & 1.2.2 [*modify as applicable*] above) and specific confirmations recorded in the Record Notes of Post Bid Discussions (referred to at para 1.4 above), and award on you the 'Services Contract' (also referred to as the 'Contract') for performance of all other activities, as set forth in the documents, viz. (*Indicate brief scope of work*) for the (*insert name of Package alongwith name of the Project*)....

The scope of work under this Notification of Award (NOA) shall also include all such items which are not specifically mentioned in the Bidding Documents and/or your bid but are necessary for the successful completion of your scope under the Contract for the construction of (*insert name of Package alongwith name of the Project*), unless otherwise specifically excluded in the Bidding Documents or in this NOA.

2.1.1 Deleted

2.2 Deleted

3.0 **CONTRACT PRICE**

3.1 The total Contract Price for the entire scope of work under this Contract shall be *(Specify the currency and the amount in figures & words)* as per the following break-up:

Sl. No.	Price Component	Amount
1.	Installation Services	
Total for Services Contract		

3.2 Notwithstanding the break-up of the Contract Price, the Contract shall, at all times, be construed as a single source responsibility Contract and any breach in any part of the Contract shall be treated as a breach of the entire Contract.

4.0 You are required to furnish at the earliest a Performance Security(ies), as per the Bidding Documents, for an amount of *(Specify the value)* i.e. equal to 10% (Ten percent) of the Contract Price, and valid upto and including and any other securities as per the Bidding Documents.

(In case any other performance security is required to be furnished, the same is to be mentioned here)

5.0 All the bank guarantees shall be furnished from an eligible bank as described in the Bidding Documents.

6.0 The schedule for Taking Over/Completion of Facilities by the Employer upon successful completion of the *(insert name of Package alongwith name of the Project)* shall be ... *(indicate the completion schedule)* ... months from the date of issue of this Notification of Award for all contractual purposes.

7.0 This Notification of Award constitutes formation of the Contract and comes into force with effect from the date of issuance of this Notification of Award.

8.0 You shall enter into a Contract Agreement with us within twenty-eight (28) days from the date of this Notification of Award.

9.0 This Notification of Award is being issued to you in duplicate. We request you to return its duplicate copy duly signed and stamped on each page including the enclosed Appendix as a token of your acknowledgement.

Please take the necessary action to commence the work and confirm action.

Yours faithfully,

For and on behalf of

.....(*Name of the Employer*).....

(*Authorised Signatory*)

Enclosures:

APPENDIX (NOA) – 1 - Record Notes of Post - Bid Discussions held on various dates from to

Note:

- (1) Instructions indicated in italics in this notification of award are to be taken care of by the issuing authority. The Forms may be modified appropriately to suit the specific requirement of the Contract.

5. FORM OF CONTRACT AGREEMENT

SERVICES CONTRACT AGREEMENT BETWEEN (*Name of Employer*)
..... AND M/s. (*Name of Contractor*)

THIS CONTRACT AGREEMENT No. (also referred to as 'Services Contract/the Contract') is made on the day of 20.....

BETWEEN

(1) (*Name of Employer*)..... a company incorporated under the laws of Companies Act 1956 and having its Registered Office at (*registered address of the Employer*) and its Corporate Office at (*address of the Employer*)..... (hereinafter called "the Employer" and also referred to as ".....(*insert abbreviated name of the Employer*)")

and

(2) M/s (*Name of Contractor*), a company incorporated under the laws of Companies Act 1956 and having its Principal place of business at (*Address of Contractor*) and Registered Office at (*Registered address of Contractor*) (hereinafter called "the Contractor" and also referred to as ".....(*insert abbreviated name of the Contractor*)")

WHEREAS the Employer desires to engage the Contractor for providing all the services inter-alia including (*Indicate brief scope of work*) for the complete execution of the (*insert name of Package alongwith name of the Project*)..... as detailed in the Contract Document ("the Facilities"), and the Contractor has agreed to such engagement upon and subject to the terms and conditions hereinafter appearing.

NOW IT IS HEREBY AGREED as follows:

Article 1. Contract Documents

1.1 Contract Documents (Reference GCC Clause 2.2)

The following documents shall constitute the Contract between the Employer and the Contractor, and each shall be read and construed as an integral part of the Contract:

VOLUME – A

1. This Contract Agreement and the Appendices thereto.
2. Notification of Award Ref. No. dated

VOLUME – B

3. "Bidding Documents" comprising of the following:
 - (a) Volume –I of Bidding Documents (Document Code No.:), read in conjunction with Amendments to to the Bidding Documents.
 - (b) Volume –II of Bidding Documents (Document Code No.:) comprising of Technical Specifications.

VOLUME – C

4. Bid Submitted by the Contractor.

(Only relevant extracts are attached herewith for easy reference. Should the circumstances warrant, the original Bid along with the enclosures thereof, shall be referred to.)

1.2 Order of Precedence (Reference GCC Clause 2)

In the event of any ambiguity or conflict between the Contract Documents listed above, the order of precedence shall be the order in which the Contract Documents are listed in Article 1.1 (Contract Documents) above.

1.3 Definitions (Reference GCC Clause 1/SCC Clause 1)

- 1.3.1 Capitalized words and phrases used herein shall have the same meanings as are ascribed to them in the General Conditions of Contract/Special Conditions of Contract.

Article 2. Contract Price and Terms of Payment

2.1 Contract Price (Reference GCC Clause 7)

The Employer hereby agrees to pay to the Contractor the Contract Price in consideration of the performance by the Contractor of its obligations hereunder.

The Contract Price shall be the aggregate of (*amount of currency in words*) (*amount in figures*)), or such other sums as may be determined in accordance with the terms and conditions of the Contract. The break-up of the Contract price is as under:

Sl. No.	Price Component	Amount
1.	Installation Services	
Total for Services Contract		

The detailed break-up of Contract Price is given in the relevant Appendices hereto.

2.2 Terms of Payment (Reference GCC Clause 8)

The terms and procedures of payment according to which the Employer will reimburse the Contractor are given in Appendix 1 (Terms and Procedures of Payment) hereto.

Article 3. Effective Date for Determining Time for Completion

3.1 Effective Date (Reference GCC Clause 1)

The Time of Completion of Facilities shall be determined from the date of the Notification of Award i.e., from

Article 4. Appendices

The Appendices listed in the List of Appendices, as mentioned below, shall be deemed to form an integral part of this Contract Agreement.

Reference in the Contract to any Appendix shall mean the Appendices attached hereto, and the Contract shall be read and construed accordingly.

List of Appendices

Appendix 1	Terms and Procedures of Payment
Appendix 2	Price Adjustment
Appendix 3	Insurance Requirements
Appendix 4	Time Schedule
Appendix 5	List of Approved Subcontractors
Appendix 6	Scope of Works and Supply by the Employer

- Appendix 7 List of Document for Approval or Review
 - Appendix 8 Guarantees, Liquidated Damages for Non-Performance
 - Appendix 9^ Contract Co-ordination Procedure
 - Appendix 10^ Summary of Detailed Price Break-up
 - Appendix 10A^ Detailed Price Break-up of Charges
- [^ to be appended at the Stage of Contract Award.]

Article 5.

(Deleted)

IN WITNESS WHEREOF the Employer and the Contractor have caused this Agreement to be duly executed by their duly authorized representatives the day and year first above written.

Signed by for and
on behalf of the Employer

Signed by for and
on behalf of the Contractor

.....
Signature

.....
Signature

.....
Title

.....
Title

in the presence of

in the presence of

TERMS AND PROCEDURES OF PAYMENT

In accordance with the provisions of GCC Clause 8 (Terms of Payment), the Employer shall pay the Contractor in the following manner and at the following times, on the basis of the Price Breakdown given in the section on price schedules. Payments will be made in the currencies quoted by the Bidder unless otherwise agreed between the parties. The Contractor may make applications for payment in respect of part deliveries as work proceeds.

1. TERMS OF PAYMENT

In addition to the Conditions stipulated under GCC Clause 8, the following terms & Conditions will apply.

1.1 (Deleted)

1.2 (Deleted)

1.3 (Deleted)

1.4 Price Component for Installation (including Civil Works)

A. Survey

(Deleted).

B. Initial Advance: No advance.

C Progressive Payment

90% (ninety percent) of the erection price component, will be paid on progressive monthly basis depending on the actual work done against each completed activity and on certification of the same by the Employer..

D. Final Payment

The balance 10% (ten percent) of the erection price component shall be paid after successful completion of all works under this package and issuance of Taking Over Certificate..

1.4.1 Deleted

1.5 Payment towards Price adjustment- Prices are Firm and Price adjustment is not applicable

1.6 Payment towards Taxes and Duties

All taxes, levies, duties etc. such as GST etc. are deemed to be included in the quoted price.

2. PAYMENT PROCEDURES

2.1 Method of Payment

The Employer shall make payments promptly within thirty (30) days of submission of an invoice/claim by the Contractor, complete in all respects and supported by the requisite documents and fulfillment of stipulated conditions, if any and certification by Employer. All the payment shall be released to the Contractor directly.

All payments to be made directly to the Contractor shall be made by the Employer through electronic payment mechanism (e-payment) for which necessary details shall be tied up during execution of the Contract. However, a request for payment to be released through cheque shall be considered on case to case basis and merit of the same.

Note: Pro-rata shall refer to functionally complete part(s) of the facilities, for which unit rates are identified in the contract.

PRICE ADJUSTMENT (Not applicable)

No price adjustment shall be applicable. All contract prices are firm.

INSURANCE REQUIREMENTS

Insurances to be taken out by the Contractor

In accordance with the provisions of GCC Clause 30, the Contractor shall at its expense take out and maintain in effect, or cause to be taken out and maintained in effect, during the performance of the Contract, the insurances set forth below in the sums and with the deductibles and other conditions specified. The identity of the insurers and the form of the policies shall be subject to the approval of the Employer, such approval not to be unreasonably withheld. The inability of the insurers to provide insurance cover in the sums and with the deductibles and other conditions as set forth below, shall not absolve the Contractor of his risks and liabilities under the provisions of GCC Clause 30. However, in such a case the Contractor shall be required to furnish to the Employer documentary evidence from the insurer in support of the insurer's inability as aforesaid. Further, in cases where the Contractor intends to provide the requisite insurance coverage under policy(ies) which are in the nature of or similar to 'Open Insurance Policy' and/or such other policies which serve the purpose set forth for insurance required, taken and maintained in effect by the Contractor in the course of its operations as going concern, the same shall be acceptable provided it meets the requirements specified herein to the satisfaction of the Employer.

(a) Insurance for transportation of owner supply materials from existing store of TPTL/TPTL's contractors

Covering physical loss or damage to the owner supply materials during loading/unloading and transportation from the existing stores of TPTL/ TPTL's contractors to the Contractors store or tower locations

Amount	Deductible limits	Parties Insured	From	To
140% of the (Ex-works/CIF price)	NIL	Contractor/ & Employer	Other Contractor Store	Other Contractor Store + 30 days

(b) Installation All Risks Insurance

covering physical loss or damage to the Facilities at the Site, occurring prior to Completion of the Facilities, with an extended maintenance coverage for the Contractor's liability in respect of any loss or damage occurring during the Defect

Liability Period while the Contractor is on the Site for the purpose of performing its obligations during the Defect Liability Period.

Amount	Deductible limits	Parties Insured	From	To
140% of the (Contract Price)	NIL	Contractor/ Sub-contractor & Employer	Receipt at site	Upto Defect Liability period

(c) Third Party Liability Insurance

covering bodily injury or death suffered by third parties (including the Employer's personnel) and loss of or damage to property (including the Employer's property and any parts of the Facilities which have been accepted by the Employer) occurring in connection with the supply and installation of the Facilities.

Amount	Deductible limits	Parties Insured	From	To
Rs. 0.5 million per person per occasion	NIL	Contractor/ Sub-contractor	Commencement of work	Upto Defect Liability period

(d) Automobile Liability Insurance

covering use of all vehicles used by the Contractor or its Subcontractors (whether or not owned by them) in connection with the supply and installation of the Facilities. Comprehensive insurance in accordance with statutory requirements. For the purpose of this insurance cover Comprehensive insurance of each individual vehicles separately as per the insurance par lance shall be acceptable.

(e) Worker's Compensation

In accordance with the statutory requirements applicable in India.

(f) Employer's Liability

In accordance with the statutory requirements applicable in India.

(g) Other Insurances

The Contractor is also required to take out and maintain at its own cost the following insurances:

Amount	Deductible limits	Parties Insured	From	To
	NIL	Contractor/ Sub-contractor & Employer	Receipt at site	Upto Defect Liability period

The Employer shall be named as co-insured under all insurance policies taken out by the Contractor pursuant to GCC Sub-Clause 30.1 except for the Third Party Liability, Worker's Compensation and Employer's Liability Insurances, and the Contractor's Subcontractors shall be named as co-insured under all insurance policies taken out by the Contractor pursuant to GCC Sub-Clause 30.1 except for the Cargo, Worker's Compensation and Employer's Liability Insurances, and all insurer's rights of subrogation against such co-insured for losses or claims arising out of the performance of the Contract shall be waived under such policies.

Insurances to be taken out by the Employer

The Employer shall at its expense take out and maintain in effect during the performance of the Contract the following insurances.

Details:.....

Amount	Deductible limits	Parties Insured	From	To
		_____ NIL _____		

TIME SCHEDULE

1. The Project Completion Schedule shall be as follows:

Sl. No.	Activities	Duration in months from the effective date of Contract
	Taking Over by the Employer upon successful completion of:	
1.	Sub Package – Earth Cutting Works: <i>Earth Cutting Works for 400kV D/C Quad Teesta III HEP – Kishanganj Transmission Line.</i> (Specification Nos.: Sub Package- Earth Cutting Works : TPTL/ECW)	5 (Five)

- 1.1 The activity(ies) under the Contractor's programme for Project Completion shall be in the form of a master network (MNW) and shall identify the various activities like design, engineering, manufacturing, supply for installation, factory testing, transportation to site, site testing and commissioning, trial operation and Taking Over etc. of the Facilities or specific part thereof (where specific parts are specified in SCC). The network shall conform to the above Project Completion Schedule.

This master network will be discussed and agreed before Award. Liquidated damages for delay in successful Completion of the Facilities or specific part thereof (where specific parts are specified in SCC) and Operational Acceptance at rates specified in Clause 21 of GCC shall be applicable beyond the date specified above.

- 1.2 The Employer reserves the right to request minor changes in the work schedule at the time of Award of Contract to the successful Bidder.
- 1.3 The successful Bidder shall be required to prepare detailed Network(s) and project implementation plans & programmes and finalise the same with the Employer as per the requirement specified in Technical Specifications, which shall form a part of the Contract.

LIST OF APPROVED SUBCONTRACTORS

Not Applicable

SCOPE OF WORKS AND SUPPLY BY THE EMPLOYER

The following personnel, facilities, works and supplies will be provided/supplied by the Employer, and the provisions of GCC 6, 16, 17 and 20 as well as Employer responsibilities stated in technical specifications shall apply as appropriate.

All personnel, facilities, works and supplies will be provided by the Employer in good time so as not to delay the performance of the Contractor in accordance with the approved Time Schedule and Program of Performance pursuant to GCC Sub-Clause 14.2.

Unless otherwise indicated, all personnel, facilities, works and supplies will be provided free of charge to the Contractor.

Personnel	Charge to Contractor – None
-----NIL-----	

Facilities	Charge to Contractor - None except as noted
------------	---

Electricity and Water	Charge to Contractor - as noted
-----------------------	---------------------------------

The Contractor shall be entitled to use for the purposes of the facilities such supplies of electricity and water as may be available on the Site and shall provide any apparatus necessary for such use. The Contractor shall pay the Employer at the applicable tariff plus Employer's overheads, if any, for such use. Where such supplies are not available, the Contractor shall make his own arrangement for provision of any supplies he may require.

Works	Charge to Contractor - None
-----NIL-----	

Supplies	Charge to Contractor – None except as noted
----------	---

Conductor, Insulator and any other material as specified in the Technical Specifications.

LIST OF DOCUMENTS FOR APPROVAL OR REVIEW

Pursuant to GCC Sub-Clause 16.3.1, the Contractor shall prepare, and present to the Project Manager in accordance with the requirements of GCC Sub-Clause 14.2 (Program of Performance), the following documents for:

A. Approval

- 1.
- 2.
- 3.

B. Review

- 1.
- 2.
- 3.

Note :

Bidder shall furnish the exhaustive list, which shall be discussed and finalised for incorporation into the Contract Agreement.

GUARANTEES, LIQUIDATED DAMAGES FOR NON – PERFORMANCE

Not Applicable

6. PERFORMANCE SECURITY FORM

Bank Guarantee No.

Date.....

Contract No.....

.....[Name of Contract].....

To: [Name and address of the Employer]

Dear Ladies and/or Gentlemen,

We refer to the Contract ("the Contract") signed on(insert date of the Contract)..... between you and M/s (Name of Contractor), having its Principal place of business at(Address of Contractor) and Registered Office at(Registered address of Contractor) ("the Contractor") concerning (Indicate brief scope of work) for the complete execution of the (insert name of Package alongwith name of the Project)..... [Applicable for Bank Guarantees issued by Contractor/Associate for those Contracts awarded to them]

Or

We refer to the Contract signed on(insert date of the Contract)..... between you and M/s (Name of Contractor), having its Principal place of business at(Address of Contractor) and Registered Office at(Registered address of Contractor) ("the Contractor") and the Contract ("the Contract") signed on(insert date of the Contract)..... between you and M/s (Name of Associate), having its Principal place of business at(Address of Associate) and Registered Office at(Registered address of Associate), the Associate of the Contractor for executing the Facilities concerning (Indicate brief scope of work) for the complete execution of the (insert name of Package alongwith name of the Project)..... [Applicable for Bank Guarantees to be issued by Contractor against those Contracts awarded to their Associate]

By this letter we, the undersigned,(insert name & address of the issuing bank), a Bank (which expression shall include its successors, administrators, executors and assigns) organized under the laws of and having its

Registered/Head Office at(insert address of registered office of the bank)..... do hereby irrevocably guarantee payment to you up to i.e., ten percent (10%) of the Contract Price until ninety (90) days beyond the Defect Liability Period i.e., upto and inclusive of (dd/mm/yy).

We undertake to make payment under this Letter of Guarantee upon receipt by us of your first written demand signed by your duly authorized officer declaring the Contractor to be in default under the Contract and without cavil or argument any sum or sums within the above named limits, without your need to prove or show grounds or reasons for your demand and without the right of the Contractor to dispute or question such demand.

Our liability under this Letter of Guarantee shall be to pay to you whichever is the lesser of the sum so requested or the amount then guaranteed hereunder in respect of any demand duly made hereunder prior to expiry of the Letter of Guarantee, without being entitled to inquire whether or not this payment is lawfully demanded.

This letter of Guarantee shall remain in full force and shall be valid from the date of issue until ninety (90) days beyond the Defect Liability Period of the Facilities i.e. upto and inclusive of (dd/mm/yy) and shall be extended from time to time for such period (not exceeding one year), as may be desired by M/s. on whose behalf this Letter of Guarantee has been given.

Except for the documents herein specified, no other documents or other action shall be required, notwithstanding any applicable law or regulation.

If the Defect Liability Period is extended with respect to any part of the Facilities in accordance with the Contract, the validity of this letter of Guarantee shall be extended with respect to ten percent (10%) of the Contract Price of that part until expiry of 90 days beyond such extended Defect Liability Period.

Our liability under this Letter of Guarantee shall become null and void immediately upon its expiry, whether it is returned or not, and no claim may be made hereunder after such expiry or after the aggregate of the sums paid by us to you shall equal the sums guaranteed hereunder, whichever is the earlier.

All notices to be given under shall be given by registered (airmail) posts to the addressee at the address herein set out or as otherwise advised by and between the parties hereto.

We hereby agree that any part of the Contract may be amended, renewed, extended, modified, compromised, released or discharged by mutual agreement between you and the Contractor, and this security may be exchanged or surrendered without in any way

impairing or affecting our liabilities hereunder without notices to us and without the necessity for any additional endorsement, consent or guarantee by us, provided, however, that the sum guaranteed shall not be increased or decreased.

No action, event or condition which by any applicable law should operate to discharge us from liability hereunder shall have any effect and we hereby waive any right we may have to apply such law so that in all respects our liability hereunder shall be irrevocable and, except as stated herein, unconditional in all respects.

Yours truly,

Name of the Bank

.....
Authorized Signature

Signature of Witness.....

Name.....

Address.....

Note :

1. The non-judicial stamp papers of appropriate value shall be purchased in the name of Bank who issues the 'Bank Guarantee' and the date of purchase should not be later than six months of issuance of the Bank Guarantee by the Bank.
2. The Bank Guarantee shall be signed on all the pages by the Bank Authorities indicating their POA nos. and should invariably be witnessed.

7. BANK GUARANTEE FORM FOR ADVANCE PAYMENT

Bank Guarantee No.

Date.....

Contract No.....

.....[Name of Contract].....

To: [Name and address of the Employer]

Dear Ladies and/or Gentlemen,

We refer to the Contract ("the Contract") signed on(insert date of the Contract)..... between you and M/s (Name of Contractor), having its Principal place of business at(Address of Contractor) and Registered Office at(Registered address of Contractor) ("the Contractor") concerning (Indicate brief scope of work) for the complete execution of the (insert name of Package alongwith name of the Project).....

Whereas, in accordance with the terms of the said Contract, the Employer has agreed to pay or cause to be paid to the Contractor an Advance Payment in the amount of(Amount in figures and words).....

By this letter we, the undersigned,(insert name & address of the issuing bank), a Bank (which expression shall include its successors, administrators, executors and assigns) organized under the laws of and having its Registered/Head Office at(insert address of registered office of the bank)..... do hereby irrevocably guarantee repayment of the said amounts upon the first demand of the Employer without cavil or argument in the event that the Contractor fails to commence or fulfill its obligations under the terms of the said Contract, and in the event of such failure, refuses to repay all or part (as the case may be) of the said advance payment to the Employer.

Provided always that the Bank's obligation shall be limited to an amount equal to the outstanding balance of the advance payment, taking into account such amounts, which have been repaid by the Contractor from time to time in accordance with the terms of payment of the said Contract as evidenced by appropriate payment certificates.

This Guarantee shall remain in full force from the date upon which the said advance payment is received by the Contractor upto ninety (90) days beyond the date on which the entire advance so advanced alongwith the interest if any due thereon has been fully

adjusted in terms of the Contract i.e., upto of ninety (90) days beyond the date of Completion of the Facilities under the Contract. This Guarantee may be extended from time to time, as may be desired by M/s. on whose behalf this Guarantee has been issued.

Any claims to be made under this Guarantee must be received by the Bank during its period of validity, i.e. upto ninety (90) days beyond the date of Completion of the Facilities by the Employer i.e. upto and inclusive of (dd/mm/yy).

Yours truly,
Name of the Bank

.....
Authorized Signature

Signature of Witness.....

Name.....

Address.....

Note :

1. The non-judicial stamp papers of appropriate value shall be purchased in the name of Bank who issues the 'Bank Guarantee' and the date of purchase should not be later than six months of issuance of the Bank Guarantee by the Bank.
2. The Bank Guarantee shall be signed on all the pages by the Bank Authorities indicating their POA nos. and should invariably be witnessed.

8. FORM OF TAKING OVER CERTIFICATE

Date.....

Name of Contract.....

Contract No.....

To :

(Name and address of the Contractor)

Dear Ladies and/or Gentlemen,

Pursuant to GCC 20 (Completion of the Facilities) of the General Conditions of the Contract entered into between yourselves and the Employer dated relating to the (*insert brief description of the Facilities*)..... we hereby notify you that the following part(s) of the Facilities was (were) complete on the date specified below, and that, in accordance with the terms of the Contract, the Employer hereby takes over the said part(s) of the Facilities, together with the responsibility for care and custody and the risk of loss thereof on the date mentioned below :

- 1. Description of the Facilities or part thereof
.....
- 2. Date of Completion :.....

However, you are required to complete the outstanding items listed in the attachment hereto as soon as practicable.

This letter does not relieve you of your obligation to complete the execution of the Facilities in accordance with the Contract nor of your obligations during the Defects Liability Period.

Very truly yours,

Title
(Project Manager)

9. FORM OF INDEMNITY BOND TO BE EXECUTED BY THE CONTRACTOR FOR THE EQUIPMENT HANDED OVER IN ONE LOT BY(abbreviated name of the Employer)..... FOR PERFORMANCE OF ITS CONTRACT

INDEMNITY BOND

THIS INDEMNITY BOND is made this..... day of 20..... by a Company registered under the Companies Act, 1956/Partnership firm/ proprietary concern having its Registered Office at.....(hereinafter called as 'Contractor' or "Obligor" which expression shall include its successors and permitted assigns) in favour of (*insert name of the Employer*)....., a Company incorporated under the Companies Act, 1956 having its Registered Office at(*insert registered address of the Employer*) and its project at (*hereinafter called ".....(abbreviated name of the Employer)....."* which expression shall include its successors and assigns):

WHEREAS(*abbreviated name of the Employer*)..... has awarded to the Contractor a Contract for..... vide its Notification of Award/Contract No..... dated..... and its Amendment No. (applicable when amendments have been issued) (hereinafter called the "Contract") in terms of which(*abbreviated name of the Employer*)..... is required to hand over various Equipment to the Contractor for execution of the Contract.

And WHEREAS by virtue of Clause No.....of the said Contract, the Contractor is required to execute an Indemnity Bond in favour of(*abbreviated name of the Employer*)..... for the Equipment handed over to it by(*abbreviated name of the Employer*)..... for the purpose of performance of the Contract/Erection portion of the contract (hereinafter called the "Equipment").

AND THEREFORE, This Indemnity Bond witnesseth as follows:

1. That in consideration of various Equipment as mentioned in the Contract, valued at (amount in words.....) handed over to the Contractor for the purpose of performance of the Contract, the Contractor hereby undertakes to indemnify and shall keep(*abbreviated name of the Employer*)..... indemnified, for the full value of the Equipment. The Contractor hereby acknowledges receipt of the Equipment as per despatch title documents handed over to the Contractor duly endorsed in their favour and detailed in the Schedule appended hereto. It is expressly understood by the Contractor that handing over of the despatch title documents in respect of the said Equipments duly endorsed by(*abbreviated name of the Employer*)..... in favour of the Contractor shall be construed as handing over of the Equipment purported to be covered by such title documents and the Contractor shall hold

such Equipment in trust as a Trustee for and on behalf of(*abbreviated name of the Employer*).....

2. That the Contractor is obliged and shall remain absolutely responsible for the safe transit/protection and custody of the Equipment at(*abbreviated name of the Employer*)..... project Site against all risks whatsoever till the Equipment are duly used/erected in accordance with the terms of the Contract and the Plant/Package duly erected and commissioned in accordance with the terms of the Contract, is taken over by(*abbreviated name of the Employer*)..... The Contractor undertakes to keep(*abbreviated name of the Employer*)..... harmless against any loss or damage that may be caused to the Equipment.
3. The Contractor undertakes that the Equipment shall be used exclusively for the performance/execution of the Contract strictly in accordance with its terms and conditions and no part of the equipment shall be utilised for any other work of purpose whatsoever. It is clearly understood by the Contractor that non-observance of the obligations under this Indemnity Bond by the Contractor shall inter-alia constitute a criminal breach of trust on the part of the Contractor for all intents and purpose including legal/penal consequences.
4. That(*abbreviated name of the Employer*)..... is and shall remain the exclusive Employer of the Equipment free from all encumbrances, charges or liens of any kind, whatsoever. The equipment shall at all times be open to inspection and checking by the Employee or Employer's Representative in this regard. Further,(*abbreviated name of the Employer*)..... shall always be free at all times to take possession of the Equipment in whatever form the equipment may be, if in its opinion, the Equipment are likely to be endangered, misutilised or converted to uses other than those specified in the Contract, by any acts of omission or commission on the part of the Contractor or any other person or on account of any reason whatsoever and the Contractor binds himself and undertakes to comply with the directions of demand of(*abbreviated name of the Employer*)..... to return the equipment without any demur or reservation.
5. That this indemnity Bond is irrevocable. If at any time any loss or damage occurs to the Equipment or the same or any part thereof is misutilised in any manner whatsoever, then the Contractor hereby agrees that the decision of the Employer's Representative as to assessment of loss or damage to the Equipment shall be final and binding on the Contractor. The Contractor binds itself and undertakes to replace the lost and/or damaged Equipment at his own cost and/or shall pay the amount of loss to(*abbreviated name of the Employer*)..... without any demur, reservation or protest. This is without prejudice to any other right or remedy that may be available to(*abbreviated*

name of the Employer)..... against the Contractor under the Contract and under this Indemnity Bond.

6. NOW THE CONDITION of this Bond is that if the Contractor shall duly and punctually comply with the terms and conditions of this Bond to the satisfaction of(*abbreviated name of the Employer*)....., THEN, the above Bond shall be void, but otherwise, it shall remain in full force and virtue.

IN WITNESS WHEREOF, the Contractor has hereunto set its hand through its authorised representative under the common seal of the Company, the day, month and year first above mentioned.

SCHEDULE

Particulars of the Equipment handed over	Quantity	Particulars of Despatch title Documents		Value of the Equipment	Signature of the Attorney in token of receipt
		RR/GR No. date of lading	Carrier		

For and on behalf of
M/s.....

WITNESS

1. Signature.....

Signature.....

Name.....

Name.....

Address.....

Address.....

2. Signature.....

Authorised representative

Name.....

(Common Seal)

Address.....

(In case of Company)

Indemnity Bonds are to be executed by the authorised person and (i) in case of contracting Company under common seal of the Company or (ii) having the power of

attorney issued under common seal of the company with authority to execute Indemnity Bonds, (iii) In case of (ii), the original Power of Attorney if it is specifically for this Contract or a Photostat copy of the Power of Attorney if it is General Power of Attorney and such documents should be attached to Indemnity Bond.

10. FORM OF INDEMNITY BOND TO BE EXECUTED BY THE CONTRACTOR FOR THE EQUIPMENT HANDED OVER IN INSTALLMENTS BY(abbreviated name of the Employer)..... FOR PERFORMANCE OF ITS CONTRACT

INDEMNITY BOND

THIS INDEMNITY BOND is made this day of 20..... by a Company registered under the Companies Act, 1956/Partnership firm/proprietary concern having its Registered Office at(hereinafter called as 'Contractor' or 'Obligor' which expression shall include its successors and permitted assigns) in favour of(insert name of the Employer)....., a company incorporated under the Companies Act, 1956 having its Registered Office at(insert registered address of the Employer)..... and its project at (herein after called ".....(abbreviated name of the Employer)....." which expression shall include its successors and assigns):

WHEREAS(abbreviated name of the Employer)..... has awarded to the Contractor a Contract forvide its Notification of Award/Contract No. datedand Amendment No. (applicable when amendments have been issued) (hereinafter called the "Contract") in terms of which(abbreviated name of the Employer)..... is required to handover various Equipment to the Contractor for execution of the Contract.

AND WHEREAS by virtue of Clause No.....of the said Contract, the Contractor is required to execute an Indemnity Bond in favour of(abbreviated name of the Employer)..... for the Equipment handed over to it by(abbreviated name of the Employer)..... for the purpose of performance of the contract/Erection portion of the Contract (hereinafter called the "Equipment".)

NOW THEREFORE, This Indemnity Bond witnesseth as follows:

1. That in consideration of various Equipments as mentioned in the Contract, valued at (amount in words _____) to be handed over to the Contractor in installments from time to time for the purpose of performance of the contract, the Contractor hereby undertakes to indemnify and shall keep(abbreviated name of the Employer)..... indemnified, for the full value of Equipment. The Contractor hereby acknowledges receipt of the initial installment of the equipment per details in the schedule appended hereto. Further, the Contractor agrees to acknowledge receipt of the subsequent installments of the Equipment as required by(abbreviated name of the Employer)..... in the form of Schedules consecutively numbered which shall be attached to this Indemnity bond so as to form integral parts of this Bond. It is

- expressly understood by the Contractor that handing over the despatch title documents in respect of the said Equipments duly endorsed by(*abbreviated name of the Employer*)..... in favour of the Contractor shall be construed as handing over the Equipment purported to be covered by such title documents and the Contractor shall hold such Equipments in trust as a Trustee for and on behalf of(*abbreviated name of the Employer*).....
2. That the Contractor is obliged and shall remain absolutely responsible for the safe transit/protection and custody of the Equipment at(*abbreviated name of the Employer*)..... project Site against all risks whatsoever till the Equipment are duly used/erected in accordance with the terms of the Contract and the Plant/Package duly erected and commissioned in accordance with the terms of the Contract, is taken over by(*abbreviated name of the Employer*)..... The Contractor undertakes to keep(*abbreviated name of the Employer*)..... harmless against any loss or damage that may be caused to the Equipment.
 3. The Contractor undertakes that the Equipment shall be used exclusively for the performance/execution of the Contract strictly in accordance with its terms and conditions and no part of the equipment shall be utilised for any other work or purpose whatsoever. It is clearly understood by the Contractor that non-observance of the obligations under this Indemnity Bond by the Contractor shall inter-alia constitute a criminal breach of trust on the part of the Contractor for all intents and purpose including legal/penal consequences.
 4. That(*abbreviated name of the Employer*)..... is and shall remain the exclusive Employer of the Equipment free from all encumbrances, charges or liens of any kind, whatsoever. The equipment shall at all times be open to inspection and checking by the Employer or Employer's Representative in this regard. Further,(*abbreviated name of the Employer*)..... shall always be free at all times to take possession of the Equipment in whatever form the Equipment may be, if in its opinion, the Equipment are likely to be endangered, misutilised or converted to uses other than those specified in the Contract, by any acts of omission or commission on the part of the Contractor or any other person or on account of any reason whatsoever and the Contractor binds himself and undertakes to comply with the directions of demand of(*abbreviated name of the Employer*)..... to return the equipment without any demur or reservation.
 5. That this indemnity Bond is irrevocable. If at any time any loss or damage occurs to the Equipment or the same or any part thereof is misutilised in any manner whatsoever, then the Contractor hereby agrees that the decision of the Employer's Representative as to assessment of loss or damage to the Equipment shall be final and binding on the Contractor. The Contractor binds itself and undertakes to replace the lost and/or damaged Equipment at its own cost

and/or shall pay the amount of loss to(abbreviated name of the Employer)..... without any demur, reservation or protest. This is without prejudice to any other right or remedy that may be available to(abbreviated name of the Employer)..... against the Contractor under the Contract and under this Indemnity Bond.

6. NOW THE CONDITION of this Bond is that if the Contractor shall duly and punctually comply with the terms and conditions of this Bond to the satisfaction of(abbreviated name of the Employer)....., THEN, the above Bond shall be void, but otherwise, it shall remain in full force and virtue.

IN WITNESS WHEREOF, the Contractor has hereunto set its hand through its authorised representative under the common seal of the Company, the day, month and year first above mentioned.

SCHEDULE No. 1

Particulars of the Equipment handed over	Quantity	Particulars of Despatch title Documents		Value of the Equipment	Signature of the Attorney in token of receipt
		RR/GR No. date of lading	Carrier		

For and on behalf of
M/s.....

WITNESS

1. Signature.....
Name.....
Address.....

Signature.....
Name.....
Address.....

2. Signature.....
Name.....
Address.....

Authorised representative
(Common Seal)
(In case of Company)

Indemnity Bonds are to be executed by the authorised person and (i) in case of contracting Company under common seal of the Company or (ii) having the power of attorney issued under common seal of the company with authority to execute Indemnity Bonds, (iii) In case of (ii), the original Power of Attorney if it is specifically for this Contract or a photostat copy of the Power of Attorney if it is General Power of Attorney and such documents should be attached to Indemnity Bond.

11. FORM OF AUTHORISATION LETTER

Ref. No:

Date :

To

M/s.....
.....
.....

REF.: Contract No. dated for
awarded by(insert name of the Employer).....

Dear Sir,

Kindly refer to Contract No. dated for You are hereby authorised on behalf of (Name of Employer)..... a company incorporated under the laws of Companies Act 1956 and having its Registered Office at(registered address of the Employer) and its Project at to take physical delivery of materials/equipments covered under Despatch Document/Consignment Note No.*..... datedand as detailed in the enclosed schedule for the sole purpose of successful performance of the aforesaid contract and for no other purpose, whatsoever.

(Signature of Project Authority)**

Designation.....

Date.....

Encl: As Above.

** To be signed not below the rank of Manager.

* Mention LR/RR No.

Schedule of Material/Equipment covered under Despatch Title Document (RR No./LR No.)

Sl. No.	Contract Name	NOA No./ CA No.	Description of Materials/ Equipments	Spec. No.	Qty.	Value	Remarks

(Signature of the Project Authority)

(Designation)

(Date)

12. FORM OF TRUST RECEIPT FOR PLANT, EQUIPMENT AND MATERIALS RECEIVED

We M/s.(*insert name of the Contractor*) having our Principal place of business at having been awarded a Contract No. dated for (*insert Package name alongwith name of the Project*)..... by(*insert name of the Employer*)

We do hereby acknowledge the receipt of the Plant, Equipment and Materials as are fully described and mentioned under Documents of Title/RR/LR etc. and in the schedule annexed hereto, which shall form an integral part of this receipt as "Trustee" of (*insert name of the Employer*)..... The aforesaid materials etc. so received by us shall be exclusively used in the successful performance of the aforesaid Contract and for no other purpose whatsoever. We undertake not to create any charge, lien or encumbrance over the aforesaid materials etc, in favour of any other person/institution(s)/Banks.

For M/s
(*Contractor's Name*)

Dated :

(AUTHORISED SIGNATORY)

Place :

SEAL OF COMPANY

13. FORM OF EXTENSION OF BANK GUARANTEE

Ref. No.....

Dated:.....

To: *[Name and address of the Employer]*

Dear Sirs,

Sub.: Extension of Bank Guarantee No. dated for
....., issued to you on behalf of M/s. *(insert name of the Contractor)*
..... in respect of Contract No. dated for
(insert name of the Package alongwith the Project name) (hereinafter called
original Bank Guarantee).

At the request of M/s..... *(insert name of the Contractor)*, We*(insert name & address of the issuing bank)*, a Bank organized under the laws of and having its Registered/Head Office at*(insert address of registered office of the bank)*..... do hereby extend our liability under the above-mentioned Guarantee No. Dated for a further period of Years/Months from to expire on Except as provided above, all other terms and conditions of the original Bank Guarantee No. dated shall remain unaltered and binding.

Please treat this as an integral part of the original Guarantee to which it would be attached.

Yours Faithfully,

For
Manager/Agent/Accountant

Power of Attorney No.....

Dated.....

SEAL OF BANK

Note :

1. The non-judicial stamp papers of appropriate value shall be purchased in the name of Bank who issues the 'Bank Guarantee' and the date of purchase should not be later than six months of issuance of the Bank Guarantee by the Bank.
2. The Bank Guarantee shall be signed on all the pages by the Bank Authorities indicating their POA nos. and should invariably be witnessed.

14. FORMAT FOR EVIDENCE OF ACCESS TO OR AVAILABILITY OF CREDIT/FACILITIES

BANK CERTIFICATE

This is to certify that M/s. _____ (*insert Name & Address of the Contractor*) _____ who have submitted their bid to(*insert name of the Employer*)..... against their tender specification Vide ref. No. for (*insert name of the package alongwith the project name*) is our customer for the past years.

Their financial transaction with our Bank have been satisfactory. They enjoy the following fund based and non fund based limits including for guarantees, L/C and other credit facilities with us against which the extent of utilization as on date is also indicated below:

Sl. No	Type of Facility	Sanctioned Limit as on Date	Utilisation as on Date

This letter is issued at the request of M/s. _____.

Signature _____

Name of Bank _____

Name of Authorised Signatory _____

Designation _____

Phone No. _____

Address _____

SEAL OF THE BANK

15. FORM OF OPERATIONAL ACCEPTANCE

Date.....

Name of Contract.....

Contract No.....

To :

(Name and address of the Contractor)

Dear Ladies and/or Gentlemen,

Pursuant to GCC 20 (Completion of the Facilities) of the General Conditions of the Contract entered into between yourselves and the Employer dated relating to the (*insert brief description of the Facilities*)..... we hereby notify you that the we System tests and Acceptance tests of the following part(s) of the Facilities were satisfactorily completed on the date specified below :

1. Description of the Facilities or part thereof
.....
2. Date of Operational Acceptance :.....

This letter does not relieve you of your obligation during the Defects Liability Period and Latent Defect warranty.

Very truly yours,

Title
(Project Manager)