

Part III: Conditions of Contract
(FOR CIVIL/HYDRO-MECHANICAL CONTRACTS)

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CONDITIONS OF CONTRACT

1 **DEFINITIONS:**

In the Contract, the following expression shall, unless the context otherwise requires, have the meanings, thereby respectively assigned to them:

- a) The “**Government**” shall mean the Government of India or any State Government, as the case may be.
- b) The “**Corporation**” or “**Department**” or “**Purchaser**” or “**Owner**” shall mean the North Eastern Electric Power Corporation Limited (NEEPCO) having its Registered Office at Brookland Compound, Lower New Colony, Laitumkhrah, Shillong-793 003, Meghalaya, India and includes therein its legal representatives, successors and assigns.
- c) The “**Chairman and Managing Director**” shall mean the administrative head of the North Eastern Electric Power Corporation Limited, Shillong.
- d) The “**Contract**” shall mean the documents forming the bid, acceptance thereof and the formal Agreement executed between the North Eastern Electric Power Corporation Limited and the Contractor, together with documents referred to therein.
- e) “**Contract Sum**” or “**Contract Price**” shall mean the sum of the amounts arrived at by multiplying the quantities shown in the Schedule of Rates/ Bill of Quantities and Prices by the respective item rates as allowed and as indicated in the LOI/DWO.
- f) The “**Successful Bidder**” or “**Contractor**” shall mean the person or Corporation or firm whose bid for the work has been accepted to carry out the works and his/its executors, administrators or permitted assigns.
*In case of Consultancy Contract, the word “Contractor” may be replaced by the word “Consultant”.
- g) “**Work**” or “**Works**” shall mean the materials to be supplied and the permanent and temporary works to be executed as defined and set out in the specifications and includes all extra works, additions, deletions, substitutions and variations ordered by the Engineer-in-Charge in accordance with the provisions of the Contract and any other items not specifically written but essential to complete the entire activity defined in the Contract.
- (h) “**Engineer-in-Charge**” shall mean the Engineer Officer appointed by the Corporation to sign or cause to sign the Contract Agreement on behalf of the Corporation and/or the Engineer Officer appointed by the Corporation or its duly authorised representatives to direct, supervise and be in charge of the works for the purpose of the Contract.

The following Officials shall perform as Engineer-In-Charge during the period mentioned.

- a) **Executive Director(C&P)**, NEEPCO, Shillong or his authorized representative(s) (for contracts awarded from Corporate C&P Department) and **HOP/HOD/Tendering Authority** or his authorized representative(s) (for contracts awarded from project sites/ other departments/ other Authorities) shall be the Engineer-In-Charge for tendering process till award including signing of Contract Agreement between the Owner and Contractor and acceptance of Performance Guarantee;

- b) **HOP of concerned Project** or his authorized representative(s) where the work shall be executed (for contracts awarded from Corporate C&P Department) and **HOD/Site In-Charge** where the work shall be executed (for contracts awarded from project sites/ other departments/ other Authorities) or his authorized representative(s) shall be the Engineer-In-Charge for the post award management of contract including supervision and execution of work, payment, contract closure, and fulfilment of all contractual obligation including arbitration as per contract provision.
- (i) **“Representative of the Engineer-in-Charge”** shall mean the person appointed by the Corporation as representative of the Engineer-in-Charge for supervising the execution of the work and administering the Contract.
- (j) **“Specifications”** shall mean collectively all the terms and stipulations contained in the Contract Agreement, including, but not limited to, the General Terms and Conditions, Technical Specifications and Drawings and Tender Forms and Annexures, corrections and amendments thereto made in accordance with the Contract.
- (k) **“Site”** shall mean the land on/under, in or through which the works are to be executed or carried out and such lands as may be agreed upon between the Corporation and the Contractor as being reasonable and necessary for carrying out of the works.
- (l) **“Drawings”** shall mean collectively the tender drawings as well as all detailed / construction drawings, which may be issued from time to time.
- (m) **“Tender Drawings”** shall mean the drawings furnished by the purchaser as basis for the Bid along with the Detailed Bid Document.
- (n) **“Detailed/Construction Drawings”** shall mean drawings approved by the Purchaser and furnished to the Contractor for execution of the work and they will form part of the Contract.
- (o) **“Labourer”** shall mean all categories of labour engaged by the Contractor, his sub-Contractors and his piece workers for work in connection with the execution of the work covered by the specifications. All these labourers will be deemed to be employed primarily by the Contractor.
- (p) **“Fiscal Year”** shall mean a year beginning on the first of April and ending on the thirty first of March of the succeeding year.
- (q) **“Day”** shall mean a calendar day.
- (r) **“Month” or “Calendar Month”** shall mean not only the period from the first of a particular month, but also any period between a date in a particular month and the date previous to the corresponding date in the subsequent month unless specifically stated otherwise.
- (s) **“Week”** shall mean 7(seven) consecutive calendar days.
- (t) **“Corporation’s Store”** shall mean the Stores owned by the North Eastern Electric Power Corporation Limited at the Project under execution under this Contract, unless otherwise specifically mentioned in the Contract.
- (u) **“Bid Security”** shall mean the Earnest Money as indicated in the Notice Inviting Bids (NIB) to be submitted along with the bid.

- (v) **“Performance Security” / “Initial Security Deposit”** shall mean a part of the Security Deposit to be submitted by the Successful Bidder as per provision of the Bid equivalent to the amount of Bid Security after issue of the Letter of Intent.
- (w) **“Security Deposit”** shall mean all deposits, whether in Government Securities or Bank Guarantees, from Nationalised/Scheduled Banks of India or a Foreign Bank confirmed by any Nationalized Bank of India, amounts deducted from interim payments or in any other form pledged to the Corporation for due performance of the Contract.
- (x) **“Urgent Works”** shall mean the works to be carried out by taking any urgent measures, which in opinion of the Engineer-in-Charge, become necessary at the time of execution and/or during the progress of work to obviate any risk of damage to the structures, or required to accelerate the progress of work or which become necessary for security or for any other reason the Engineer-in-Charge may deem expedient.
- (y) **“Project”** refers to the name of the Project where the work is located.
- (z) **“Plant, Equipment, Stores”** shall mean and includes plants and materials to be provided under the Contract.
- (aa) **“Letter of Intent (LOI)”** shall mean the official notice issued by the purchaser (designation of ordering authority) notifying the Contractor that his proposal/ Bid is accepted for award subject to such reservations as may have been stated therein. The LOI shall deem to be the effective date of the Contract.
- (bb) **“Detailed Work Order”** shall mean the formal award of the Work which shall be issued by the Purchaser (designation of ordering authority) on fulfilment of the terms and conditions stipulated in the LOI.
- (cc) **“Sub-Contractor(s)”** shall mean a party or parties having direct contact with the Contractor and to whom any part of the Contract has been sublet by the Contractor with the consent in writing from the Engineer-in-Charge.
- (dd) **“Elevations/Reduced Levels or R.L.”**- Wherever figures representing elevation or reduced level are given, they mean the height in metres based on Bench Marks established by the North Eastern Electric Power Corporation Limited, Shillong at site.
- (ee) **“Defect”** shall mean any part of the work not executed in accordance with the Contract.
- (ff) **“Bid”** shall mean the documents submitted by the bidder in accordance with the Notice Inviting Bids (NIB).
- (gg) **“Bidder”** shall mean an Individual/Company/ firm submitting his Proposal/Bid in response to the NIB.
- (hh) The Word **“Tender”** is synonymous with **“Bid”**, and the words ‘tender documents’ is synonymous with ‘bid documents’.
- (ii) **“Tonne”** shall mean a metric tonne (MT) or 1000 Kilogram (Kg.)
- (jj) **“Commencement Date”** shall mean the date of commencement of work as stipulated in the LOI / DWO.
- (kk) **“Foreign Currency”** shall mean a currency of a country other than that of the country in which the works are to be located.

- (II) **“Bid Document”/“Bidding Documents”** will comprise of documents stipulated in the Instruction to Bidders.

2 INTERPRETATION:

- i) Words, imparting the singular only shall also include the plural; he includes she and / or it and vice versa, unless this is repugnant to the context.
- ii) Heading and notes in these general conditions shall not be deemed to form part thereof or be taken into consideration in the interpretation or construction thereof of the Contract.
- iii) Unless otherwise provided, all reference to sums of money shall refer to Indian Currency and shall be made in Indian Rupees (INR).
- iv) Words imparting persons or parties shall include firms and Corporations and/or any Organisation having legal capacity/entity.

3 PERFORMANCE SECURITY / SECURITY DEPOSIT (SD):

- i) The full amount of Bid Security deposited by the successful bidder along with his bid may be converted into Performance Security (Initial Security Deposit, ISD), that will be treated as part of the Security Deposit. Security Deposit will be 10% (ten percent) (The value has been reduced to 3% of the value of the contract till 31-03-2023 as per MOF, DOE O.M No. 9/4/2020-PPD Dtd. 12-11-2020 & 30-12-2021) on the total value of the work actually executed inclusive of escalation and value of extra works etc. 10% (ten percent) Security Deposit, after I.S.D becomes 10% (ten percent) of executed work value, will be deducted from every interim payment made on account of this work for the due performance of the Contract under the terms and conditions laid in the Contract, which shall include all works payment, escalation payment and any other payment made to the Contractor for the work during the period of Contract.
- ii) If the Contractor expressly requests in writing, he will be permitted to convert the amount of Security Deposit deducted from his Bills into Bank Guarantee (BG) of any Nationalised / Scheduled bank in the country of the Corporation or a foreign bank confirmed by State Bank of India, London or New Delhi main Branch in the prescribed form provided under Vol.-I, Part-IV. The amount of SD to be converted shall not be less than 1% of Contract Sum at a time. The validity period of such BG shall initially be 60 (sixty) days beyond the schedule date/ revised scheduled date of completion of defect liability period.
- iii) All compensation or other sums of money payable by the Contractor under the terms of the Contract or any other Contract or on any account, whatsoever, may be deducted from or paid from the sale of a part of a sufficient part of his Security Deposit or from the interest arising therefrom or from any sums which may be due or may become due to the Contractor by the Corporation on any account, whatsoever. Also, in the event of the Security Deposit being reduced by means of such deductions or sales, as aforesaid, the Contractor shall, within 14(fourteen) days of receipt of notice of demand from the Engineer-in-Charge, make good the deficit in his Security Deposit. Should there arise any occasion under the Contract, due to which the period of validity of a Bank Guarantee, as may have been furnished by the Contractor from time to time, is required to be extended / renewed, the Contractor, at his own cost, shall get the validity period of such Guarantees extended/renewed, as the case may be and furnish these to the Engineer-in-Charge 1(one) month before the expiry date of the aforesaid Guarantees. In case of failure of the Contractor to strictly comply with the aforesaid provisions on any account for whatsoever reasons, the Engineer-in-Charge shall be at liberty, notwithstanding anything contained contrary to this in the Contract, to take such measures and action to satisfy the provisions of the Contract for having the required amount of securities at the relevant time by invoking an existing Bank Guarantee and/or by withholding the payment

of the bills or other due to the Contractor arising out of the Contract, until such time the aggregate of the amount of such bills reaches the level of the amount of the expired Bank Guarantee or the Contractor furnishes a fresh Bank Guarantee.

- iv) The Contractor shall provide the Performance Security to the Engineer-in-Charge within 21(twenty one) days of receipt of Letter of Intent. The Performance Security shall be in the form of an unconditional Bank Guarantee for the amount(s) of the Bid Security. The Performance Security shall be denominated in the types and proportions of currencies in which the Contract Sum is payable.

In case, the Contractor is a Subsidiary Company, the parent company will be required to furnish an additional performance bank guarantee of value equivalent to 1.5% (one point five percent) of the Contract Sum in the types and proportions of currencies in which the Contract Sum is payable, in addition to normal performance bank guarantee to be submitted by the Contractor to the Owner besides entering into a separate Agreement (in the requisite format included in Bid Document).

Alternatively, the Contractor may submit the ISD including additional Performance Bank Guarantee in the form of account payee Demand Draft, Insurance Surety Bond or online payment also. The Demand Draft should be drawn on Nationalised Bank/Scheduled bank only located in the country of the Corporation in favour of NEEPCO Ltd., payable at(location to be specified by the tender authority).....

- v) The Bank Guarantees against Security Deposit shall be issued either by a Nationalised Bank/Scheduled Bank in the country of the Corporation or a foreign bank confirmed by State Bank of India, London or New Delhi Main Branch. The Performance Security of a Joint Venture shall be submitted by the respective Joint Venture partners in proportion to their participation share in the Joint-Venture.
- vi) The Bank Guarantees against the Performance Security/Security Deposit / additional Performance Bank Guarantee shall be valid for a period of 60 (sixty) days beyond the date of completion of all contractual obligations of the contractor, including the Defect Liability Period (DLP), in accordance with the Contract. No claim shall be made against such Security after issue of the defects liability certificate in accordance with sub clause 65 (iii). If different Defect Liability Period shall become applicable to different sections or parts of the work in terms of Clause 65, the expiry of the latest such period shall be considered for the purpose of refund of Performance Security/ Security Deposit.
- vii) The cost of complying with the requirements of this Clause shall be borne by the Contractor.

4 REFUND OF SECURITY DEPOSIT / PERFORMANCE SECURITY:

- i) If the Final Bill is paid before the expiry of Defects Liability period, entire amount of Security Deposit shall be released within 14(fourteen) days of the issue of the Defects Liability Certificate only, provided that the Engineer-in-Charge is satisfied that there is no demand outstanding against the Contractor.
- ii) If the Final Bill is paid after the expiry of Defects Liability period, 50% (fifty percent) of the Security Deposit less any amount due to the Corporation shall, on demand, be returned to the Contractor within 14(fourteen) days of the issue of the Defects Liability Certificate, provided time extension, if any, for the work is granted. Balance payment of the Security Deposit shall be released to the Contractor only after the payment of Final Bill, provided that the Engineer-in-Charge is satisfied that there is no demand outstanding against the Contractor.
- iii) No interest shall be payable to the Contractor by NEEPCO against the Security Deposit furnished/ recovered from the Contractor.

5 CONTRACT DOCUMENTS:

- i) The language in which the Contract documents shall be drawn up shall be in English only and if the said documents are written in more than 1 (one) language, the language according to which the Contract is to be constructed and interpreted shall be English and designated as the **“Ruling Language”**.
- ii) A copy of the Contract documents furnished to the Contractor as aforesaid shall be kept by the Contractor at the site of work in good order and the same shall, at all reasonable times, be available for inspection and use by the Engineer-in-Charge or his representatives or by other Inspecting Officers.
- iii) The documents shall not be used by the Contractor for any purpose, other than that of the Contract.
- iv) The documents forming the Contract Agreement are to be taken as mutually explanatory of one another, but in case of ambiguities or discrepancies, the same shall be explained and adjusted by the Engineer-in Charge, who shall thereupon issue to the Contractor instructions thereon and, in such event, unless otherwise provided in the Contract, the priority of the documents forming the Contract shall be as follows:
 - a) Agreement
 - b) Detailed Work Order (DWO)
 - c) Letter of Intent (LOI)
 - d) Contract Negotiation Agreement (if any)
 - e) Minutes of Pre-bid meeting (if any)
 - f) Conditions of Contract
 - g) Technical Specifications
 - h) Tender Drawings
 - i) Bill of Quantities
 - j) Instructions to Bidders, Tender forms & Data Sheets
 - k) Information for Bidders
 - (i) Any other accepted document forming part of the contract.

6 DUTIES AND POWERS OF ENGINEER-IN-CHARGE AND HIS REPRESENTATIVES:

- i) The duties of the Engineer-in-Charge and his representatives are to watch and supervise the work and to test and examine any materials to be used or workmanship employed in connection with the works.
- ii) The Engineer-in-Charge may, from time to time in writing, delegate to his representative any of the power and authority vested upon the Engineer-in-Charge and appoint Officers at site to assist his representative and shall furnish to the Contractor a copy of all such written delegation of power and authorities. Any written instruction or any written approval given by the representative of the Engineer-in-Charge to the Contractor within the term of such delegation shall bind the Contractor and the Corporation as if it has been given by the Engineer-in-Charge.
- iii) If the Contractor is dissatisfied with any decision of the representative of the Engineer-in-Charge, he will be entitled to refer the matter to the Engineer-in-Charge, who shall thereupon confirm, reverse or vary such decision and the decision of the Engineer-in-Charge in this regard shall be final and binding on the Contractor.

7 ASSIGNMENT AND SUB-LETTING:

- i) Neither the Employer nor the Contractor shall, without the express prior written consent of the other (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 thereunder, 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.
- ii) The Contractor shall not sub-let, transfer or assign the whole or any part of the work under the Contract, unless specifically mentioned in the bid documents. The Engineer-in-Charge may, at his discretion, approve and authorise the Contractor to sub-let any part of the work, as required as per terms of the bid documents, after the Contractor submits to him in writing the details of the part of the work(s) or that proposed to be sub-let, the name of the Sub-Contractor thereof, together with his past experience in the said work/trade and the form of the proposed Sub-Contract. Nevertheless, any such approval or authorisation by the Engineer-in-Charge shall not relieve the Contractor from any or all liabilities, obligations, duties and responsibilities under the Contract. The Contractor shall also be fully responsible to the Corporation for all the acts and omissions of the Sub-Contractor, his employees and agents or persons directly employed by the Contractor. In case of sub-letting any part of the work by the Contractor to a Sub-Contractor, a copy of the Agreement between the Contractor and the Sub-Contractor shall be submitted to the Engineer-in-Charge. However, the employment of piece rate workers shall not be construed as sub-letting.

8 FACILITIES TO OTHER CONTRACTORS:

The Contractor shall, in accordance with the requirements of the works as decided by the Engineer-in-Charge, afford all reasonable facilities to other Contractors, engaged simultaneously on separate Contracts, departmental labour and labour of any other properly authorised authority or statutory body which may be employed at site for execution of any work, not included in the Contract, in connection with or ancillary to the works. In all matters of conflict of interest, the Engineer-in-Charge shall direct what compromise should be made and his decision shall be final and binding on the parties. The Contractor shall permit, without charge, the Corporation, any other Contractor and any other properly authorised Authority or statutory body to use the roads, bridges, lighting installations, and any other facilities constructed or acquired by the Contractor for use in the performance of the work under these specifications as are available, without any extra payment to the Contractor.

9 HANDING OVER OF SITE AND USE AND CARE OF SITE:

- i) The site will be handed over to the Contractor in parts progressively and the Contractor will be permitted to use the site and lands under the control of the Corporation and required for execution of work in accordance with the approved construction programme, subject to such conditions as detailed below. The Contractor shall not commence any operation on such lands except with the prior approval of the Engineer-in-Charge. However, in case delay in handing over of the site to the Contractor, the Corporation shall only consider suitable extension of time for the execution of the work. It shall be clearly understood that the Corporation will not consider any other compensation whatsoever, viz. towards idleness of Contractor's labour, equipment etc.
- ii) Rights of way required by the Contractor for accessing the site shall be provided by NEEPCO. However, the Contractor shall provide at his own cost any additional facilities outside the site required by him for the purpose of the works.

- iii) All areas of operation, including those for his staff and labour colonies handed over to the Contractor, shall be cleared and handed over back to the Engineer-in-Charge by the Contractor at his own cost and expenses whatsoever. The Contractor shall make good at his own cost to the satisfaction of the Engineer-in-Charge any damage or alterations made to areas or other properties or land handed over to him for purpose of these works. With the permission of the Engineer-in-Charge, the Contractor may use, at his own expense, for non-commercial use etc., structures and the land handed over to him. On completion of the work these structures should be dismantled and the site cleared and handed over to the Engineer-in-Charge. The land required for providing facilities to the labour employed in the work will be allotted and the Contractor shall also provide and maintain at his own expense such temporary fences, guards, bridges, and routes as may be necessary for the execution of his preliminary and ancillary works or for safeguarding the public.
- iv) On completion of the work and before payment of the Final Bill, the Contractor shall duly make good the damage, if any, done to the site and hand over vacant possession of the land made available to him in connection with work duly cleared to the satisfaction of the Engineer-in-Charge.
- v) Provided that the Contractor shall be entitled to retain on Site, until the end of the Defects Liability Period, such materials, Contractor's Equipment and Temporary Works as are required by him for the purpose of fulfilling his obligations during the Defects Liability Period.

10 APPROACH TO WORK SITE: (CONTRACT SPECIFIC)

- i) Approach Roads exist near to the work site. The bidder is advised to assess the availability of such facilities at site before submission of his bid. Access to and within the Project Area are detailed in Information For Bidders (Volume-2). All other additional approaches, as may be required for timely completion of the work, shall have to be constructed and maintained by the Contractor without any extra cost to the Corporation.
- ii) The existing road near to different quarries shall be availed by the Contractor for extracting boulders for fine and course aggregate. The bidder is advised to assess the availability of such facilities at the various quarry sites before submission of his bid. Any additional approach required for the purpose of collection of such materials shall be constructed and maintained by the Contractor without any extra cost to the Corporation.
- iii) Occasional obstruction to all access roads, such as upgrading activities, landslides etc. are not ruled out. The Contractor shall plan all transportation activities of machineries / materials etc. including construction activities, suitably.
No additional cost, whatsoever, on account of such disruption, shall be entertained by the Corporation.

11 CONTRACTOR'S GENERAL OBLIGATIONS AND SUPERVISION

- i) The Contractor shall enter into and execute the Contract Agreement, to be prepared and completed at the cost of the Corporation, in the form annexed to these Conditions with such modification as may be necessary. The Agreement will incorporate all Agreements between the Corporation and the successful Bidder.
- ii) The Contractor shall, with due care and diligence, design (to the extent provided for by the Contract), execute and complete the Works and remedy any defects therein in accordance with the provisions of the Contract. The Contractor shall provide all superintendence, labour, materials, Plant, Contractor's Equipment and all other things, whether of a temporary or permanent nature, required in and for such design, execution,

- completion and remedying of any defects, so far as the necessity for providing the same is specified in or is reasonably to be inferred from the Contract.
- iii) All Contractor's Equipment, Temporary Works and materials provided by the Contractor shall, when brought to the site, be deemed to be exclusively intended for the execution of the Works and the Contractor shall not remove the same or any part thereof, except for the purpose of moving it from one part of the site to another, without the consent of the Engineer-in-Charge. Provided that consent shall not be required for vehicles engaged in transporting any staff, labour, Contractor's Equipment, Temporary Works, Plant or materials to or from the Site.
 - iv) The Contractor shall give prompt notice to the Engineer-in-Charge of any error, omission, fault or other defect in the design of or Specification for the Works, which he discovers when reviewing the Contract or executing the Works.
 - v) The Contractor shall take full responsibility for the adequacy, stability and safety of all Site operations and methods of construction. Provided that the Contractor shall not be responsible (except as stated hereunder or as may be otherwise agreed) for the design or specification of Permanent Works, or for the design or specification of any Temporary Works not prepared by the Contractor. Where the Contract expressly provides that part of the Permanent Works shall be designed by the Contractor, he shall be fully responsible for that part of such Works, notwithstanding any approval by the Engineer-in-Charge.
 - vi) The Contractor shall himself supervise the execution of the works and may appoint, at his own expenses, a competent engineer as his accredited agent to be approved by the Engineer-in-Charge, which approval may be at any time withdrawn. The Contractor or his agent shall be present at the site(s) and shall supervise the execution of works with such additional assistance in each trade, as the work involved shall require and be considered reasonable by the Engineer-in-Charge. Direction/Instructions given by the Engineer-in-Charge to the Contractor's agent shall be considered to have the same force as if these had been given to the Contractor himself.
 - vii) If the Contractor fails to appoint a suitable agent as directed by the Engineer-in-Charge, the Engineer-in-Charge shall have full powers to suspend the execution of works until such date a suitable agent is appointed by the Contractor and takes over the supervision. For any such suspension, the Contractor shall be solely responsible for delay so caused to the works.
 - viii) If the Contractor's authorised representative is not, in the opinion of the Engineer-in-Charge, fluent in English, the Contractor shall have available at site, at all times, a competent interpreter to ensure proper transmission of instructions and information.
 - ix) A reasonable proportion of the Contractor's superintending staff shall have a working knowledge of English, or else the Contractor shall have available at site, at all times, a sufficient number of competent interpreters to ensure the proper transmission of instructions and information.
 - x) The Contractor is encouraged, to the extent practicable and reasonable, to employ staff and labour with appropriate qualifications and experience from sources within India.
 - xi) The Contractor shall, when entering into any Sub-Contract for the execution of any part of the Works, incorporate in such Sub-Contract (by reference or otherwise) the provisions of this Clause in relation to Contractor's Equipment, Temporary Works or materials brought to the Site by the Sub-Contractor.
 - xii) The operation of this Clause shall not be deemed to imply any approval by the Engineer-in-Charge of the materials or other matters referred to therein nor shall it prevent the rejection of any such materials at any time by the Engineer-in-Charge.

12 INSTRUCTIONS AND NOTICES

- i) Except as otherwise provided in the Contract, all notices to be given on behalf of the Corporation and all other actions to be taken on its behalf may be given or taken by the Engineer-in-Charge or any Officer for the time being entrusted with the functional duties and powers of the Engineer-in-Charge.
- ii) All instructions, notices and communications etc. under the Contract shall be given in writing or any such oral order/instructions given shall be confirmed in writing and no such communication which is not given or confirmed in writing shall be valid. Provided that, if the Contractor, within 7 (seven) days, confirms in writing any oral instruction received and such confirmation is not contradicted in writing within 7 (seven) days it shall be deemed to be an instruction under the Contract.
- iii) In the event of a Sub-Contractor having undertaken towards the Contractor in respect of the work executed, of the goods, materials, plant or services supplied by such Sub-Contractor, any continuing obligation extending for a period exceeding that of the Defects Liability Period under the Contract, the Contractor shall, at any time after the expiry of such period, assign to the Corporation, at the Corporation's request and at no cost to the Corporation, the benefit of such obligation for the unexpired duration thereof.
- iv) All certificates, notices or instructions to be given to the Contractor by the Corporation or the Engineer-in-Charge under the terms of the Contract shall be sent by post, cable/ facsimile/ e-mail to or left at the Contractor's principal place of business or such other address as the Contractor shall nominate for that purpose.
- v) Any notice to be given to the Corporation under the terms of the Contract shall be submitted to the Engineer-in-Charge, to be sent by post/ cable/ facsimile /e-mail to or delivered by hand.
- vi) Either party may change a nominated address to another address in the country where the Works are being executed by prior notice to the other party.

13 WATER SUPPLY

- i) The Contractor shall make his own arrangement at his cost for providing and maintaining construction and drinking water from available sources. The Contractor has to ensure the quality of water for construction purposes as per the technical specifications. The treatment of water, if any, will have to be provided by the Contractor at his own cost. The Contractor will be periodically required to carry out required tests on water once in a month and the test report shall be submitted to the Corporation for approval without any cost implication to the Corporation.
- ii) Charges, if any, leviable for usage of river water for construction/ drinking purposes by the State/ Local Authorities, the same shall be borne by the Contractor.

14 WATCHING AND LIGHTING

The Contractor shall provide and maintain at his expenses all light, guards, fencing and watch and ward staff when and where necessary or as required by the Engineer-in-Charge for the protection of the works or for the safety of those employed on the works or the public.

15 WORK ON NATIONAL HOLIDAYS

Subject to any provisions to the contrary contained in the Contract, none of the works shall be carried out during National Holidays without the permission in writing of the Engineer-in-Charge. However, when it is unavoidable or necessary for safety of life,

property or works, the Contractor shall take necessary action immediately and advise the Engineer-in-Charge accordingly.

Subject to any provision to the contrary contained in the Contract, the Contractor shall have the option to work continuously by day and by night and on locally recognized holidays or days of rest, without any additional cost to the Employer.

16 ENVIRONMENTAL PROTECTION MEASURES

- 16.1 The Contractor shall preserve and protect all existing vegetation, such as trees on or adjacent to the sites, which do not unreasonably interfere with the construction, as may be determined by the Engineer-in-Charge. The Contractor will be held responsible for all unauthorised cutting of tree, including damage, due to careless operation of equipment, stock piling of materials or tracking of grass by equipment. Care shall be taken by the Contractor in felling trees authorised for removal, to avoid any unnecessary damage to vegetation that are to remain in place and to structures under construction and workmen.
- 16.2 The Contractor shall maintain ecological balance by preventing deforestation, water pollution and defacing of natural landscape in the vicinity of work areas. The Contractor shall so conduct his construction operations as to prevent any unnecessary destruction of, scarring or defacing the natural surroundings in the vicinity of the work area. In order to maintain the ecological balance, the Contractor shall specifically observe the following instructions:
- a) Where unnecessary destruction, scarring, damage or defacing may occur as a result of the Contractor's operation, the same shall be repaired, replanted or otherwise corrected at the Contractor's expense. The Contractor will prevent scattering of rocks or other debris outside the work areas. All work areas shall be smoothened and graded in a manner to conform to the natural appearance of the landscape as directed by the Engineer-in-Charge.
 - b) All trees and shrubs, which are not specifically required to be cleared or removed for construction purposes, shall be preserved and protected from any damage that may be caused by the Contractor's Construction Operation and equipment. The removal of trees or shrubs will be permitted only after prior approval by the Engineer-in-Charge. Special care shall be exercised where trees or shrubs are exposed to injuries by construction equipment, blasting, excavating, dumping, chemical damage or other operation and the Contractor shall adequately protect such trees by use of protective barriers or other methods approved by the Engineer-in-Charge. Trees shall not be used for anchorage.
 - c) The Contractor's construction activities shall be performed by methods that will prevent entrance or accidental spillage of solid matter contaminants, debris and other objectionable pollutants and wastage into the river. Pollutants and wastes shall be disposed of in a manner and at sites approved by the Engineer-in-Charge.
 - d) In the Conduct of construction activities and operation of equipment, the Contractor shall utilize such practicable methods and devices as are reasonably available to control, prevent and otherwise minimize air pollution. Burning of materials resulting from Clearing of tree, bush, combustible construction materials and rubbish may be permitted only when atmospheric conditions for burning are considered favourable.
- 16.3 Unless otherwise provided in the Contract, water which may accumulate on the Site during the progress of work or in trenches and excavations from any cause or source, whatsoever, shall be removed from the Site by the Contractor to the satisfaction of the Engineer-in-charge, and at the Contractor's expense.

- 16.4 The Contractor shall endeavour to protect from damage, trees marked by the Engineer-in-charge at the Site. Where necessary, the Contractor shall provide at his expense, temporary fencing to protect such trees.
- 16.5 The Contractor shall, at no time, cause or permit any nuisance on the Site or cause anything which will cause unnecessary disturbance or inconvenience to the public in general and owners/tenants/occupants of adjacent properties.
- 16.6 Separate payment will not be admissible to the Contractor for complying with the provisions of this clause and all costs shall be deemed to have been included in the items mentioned in Bill of Quantities. If any provision(s) is not complied with within a reasonable time even after issue of a notice in this respect, the necessary operations would be carried out by the Engineer-in-Charge at the cost of the Contractor.
- 16.7 For ensuring the Environmental Protection Measures as mentioned at Clauses 16.1 to 16.6 above, the Contractor shall nominate a senior responsible Officer who shall be permanently posted at the Project Site from the beginning of the work till its completion and who shall monitor the measures adopted under the instructions of the Engineer-in-Charge.
- 16.8 The Contractor/Sub-Contractor shall identify environmental aspects, occupational & health hazard of its activities/operations which it can control and those that it can influence taking into account of significance. The Contractor/Sub-Contractor shall also plan those operation/activities that are associated with the identified significance and demonstrate with appropriate policy, objectives and operation control.
- 16.9 The Contractor/ Sub-Contractor shall comply with the provisions of Union and State Governments' environmental regulations relevant to the execution of the work and the protection of the Project area, such as "Indian Environment Protection Act, 1986".

17 FORCE MAJEURE

- 17.1 In this Clause, "Force Majeure" means an exceptional event or circumstance:
- (a) which is beyond a Party's control,
 - (b) which such Party could not reasonably have provided against before entering into the Contract,
 - (c) which, having arisen, such Party could not reasonably have avoided or overcome, and
 - (d) which is not substantially attributable to the other Party.

Force Majeure may include, but is not limited to, exceptional events or circumstances of the kind listed below, so long as conditions (a) to (d) above are satisfied:

- (i) war, hostilities (whether war be declared or not), invasion, act of foreign enemies,
 - (ii) rebellion, terrorism, sabotage by persons other than the Contractor's Personnel, revolution, insurrection, military or usurped power, or civil war,
 - (iii) riot, commotion, disorder, strike or lockout by persons other than the Contractor's Personnel,
 - (iv) munitions of war, explosive materials, ionising radiation or contamination by radio-activity, except as may be attributable to the Contractor's use of such munitions, explosives, radiation or radio-activity, and
 - (v) natural catastrophes such as earthquake, hurricane/ Cyclone, floods, lightning, typhoon or volcanic activity.
- 17.2 In the event of either party being rendered unable by "Force Majeure" to perform any obligation required to be performed by them under the Contract, the relative obligation of the party affected by such "Force Majeure" shall be treated as suspended for the period during which such "Force Majeure" cause lasts, provided the party

alleging that it has been rendered unable, as aforesaid, thereby shall notify within 14 (fourteen) days of the alleged beginning and ending thereof giving full particulars and satisfactory evidence in support of such cause. Engineer-in-Charge will subsequently confirm regarding the Force Majeure including period of occurrence.

- 17.3 Loss to any party due to occurrence of Force Majeure risk shall be borne by the respective Party. However, in the event of any damage caused to the Works by Force Majeure Risks, the Contractor upon receiving instructions from the Engineer-in-Charge, shall remove the debris and re-construct the Works, cost of which shall be paid by the Owner at the contract rates.

If however, the Force Majeure events causing such damage are insurable (as per Clause 19 hereof), removal of debris and re-construction/ repair shall also be done by the contractor upon receiving instructions from the Engineer-in-Charge at owner's cost and the claim proceeds received from the Insurer against such damage shall be passed on to the Owner.

- 17.4 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 CC Clause 24 (Completion Time and Extension). No cost compensation, whatsoever, will be allowed to the Contractor for the delay arising out of Force Majeure condition.

- 17.5 The Party or Parties affected by the event of Force Majeure shall use reasonable efforts to mitigate the effect thereof upon its or their performance of the Contract and to fulfil its or their obligations under the Contract.

- 17.6 If the execution of substantially all the Works in progress is prevented, hindered or delayed for a continuous period of 60 days by reason of Force Majeure of which notice has been given under Sub-Clause 17.2, or for multiple periods which total more than 120 days due to the same notified Force Majeure, then either Party may at its option terminate the contract by giving notice to the other party as per the respective procedure given in CC Clause 23 (Termination).

- 17.6 Notwithstanding any other provision of this Clause, Force Majeure shall not apply to any obligation of the Employer to make payments to the Contractor herein.

18 LIABILITY FOR DAMAGE, DEFECTS OR IMPERFECTION AND RECTIFICATIONS

- i) If the Contractor or his labour or Sub-Contractor injures, destroys or damages roads, fences, enclosures, water pipes, drains, electricity or telephone posts, wires, trees, grass line, cultivated land in the area in which they may be working or in the areas contiguous to the premises on which the work or any part of it is being executed or if any damage is caused during the progress of work, the Contractor shall, upon receipt of notice in writing on that behalf from the Engineer-in-Charge, make the same good at his own cost.
- ii) If it appears to the Engineer-in-Charge or his Representative at any time during construction or reconstruction or prior to the expiry of the Defects Liability Period, as specified elsewhere, that any work has been executed with unsound, imperfect, or unskilled workmanship or that any materials or articles provided by the Contractor for execution of the work are unsound or of a quality inferior to that contracted for, or otherwise not in accordance with the Contract or that any defect, shrinkage or other faults found in the work arising out of defective or improper materials or workmanship, the Contractor shall, upon receipt of a notice in writing on that behalf from the Engineer-in-

Charge, forthwith rectify or remove or reconstruct the works so specified in whole or in part as the case may be and/or remove the materials/articles so specified and provide other proper and suitable materials at his expense.

- iii) If the Contractor does not carry out his obligations under the above clauses, the Corporation shall carry out the same at the risk and cost of the Contractor.

19 INSURANCE AND INDEMNITY

- 19.1 Without in any manner limiting its obligations and responsibilities, the Contractor shall arrange, secure and maintain at his own cost in the joint names of the Owner and the Contractor, any and all insurances so as to cover the Works (Permanent & Temporary), entire materials (including those issued by the Owner), equipment and plant or other items fixed and used or unfixed and intended and procured for the Works against all risks (insurance of which are available as per IRDA as on Base Date i.e. 28 days prior to the latest date of submission of bids) for their replacement value, for which the Contractor shall be responsible according to the Contract. The said insurance shall be valid from the Date of commencement upto the Date of Completion of the work(s) and shall further provide cover during the Defects Liability Period in respect of all liabilities of the Contractor under the Contract. In the event of any loss or damage, it shall be the responsibility of contractor to lodge the claim with insurer within 30 (Thirty) days of occurrence and the settled amount against the claim shall be deposited by the insurer in owner's account. Contractor shall put his best effort with the insurer for early settlement of the claim. If contractor fails to settle the claims with the insurer before completion of the entire work, the amount equivalent to the loss or damage shall be recovered from any amount due to contractor.

In the event of any other risks declared insurable by IRDA after the Base date (i.e. 28 days prior to the date for opening of Techno-Commercial Bids), the Contractor shall within 30(thirty) days of such declaration arrange such insurance cover. The cost of such additional insurance cover shall be reimbursed to the Contractor by the Owner on submission of documentary proof.

In case the Contractor fails to arrange the Insurance as mentioned above against any or all insurable risks (as per IRDA), the Contractor shall be liable for loss or damage arising from such events or causes. Re-construction of such damaged Work alongwith removal of debris shall be done by the Contractor at his own cost.

- 19.2 Without prejudice to the provisions contained in Article 19.1 hereinabove, the Contractor shall take at his own cost in the joint names of the Owner and the Contractor, the following insurances:

- a) Marine-Transit-Storage-Erection-Testing-Commissioning Policy;
- b) Contractor's Plant & Machinery Policy;
- c) Motor Vehicle Insurance Policy;
- d) Workmen's Compensation Policy;
- e) Material Damage Fire Policy;
- f) Contractor's All Risk Insurance Policy.

- 19.3 The following types of insurance will constitute the minimum insurance in regard to the above requirements:

- a) **Marine-Transit-Storage-Erection-Testing Commissioning Policy:**

This policy will provide necessary cover for all materials, equipment and plant during marine and air transportation, inland transit including intermediary storage enroute, storage at site, erection, testing and commissioning including the Contractor's responsibilities and liabilities under the Contract during the Defects Liability Period. The marine cargo cover shall be extended to "on deck" shipment of goods. It shall also extend to cover war, strike, riot, civil commotion and all other Force Majeure conditions enumerated in Article 17, hereinabove, for which insurance cover is available.

b) Contractor's Plant and Machinery Policy:

The Contractor's Plant and Machinery Policy shall cover the full replacement value of the plant and machinery. The policy shall also be endorsed to cover plant and machinery working underground.

c) Motor Vehicle Insurance Policy:

The Motor Vehicle Insurance Policy will cover direct physical damage to the vehicles as well as liability to third parties. It shall apply to all authorized drivers including the expatriates and their dependents who possess valid driving license in India.

d) Workmen's Compensation Policy or its equivalent:

The Contractor will be responsible to arrange Workmen's Compensation Policy or its equivalent for his employees.

e) Material Damage Fire Policy:

To cover damage to rented premises or any other property for which the Contractor has accepted liability.

f) Contractor's All Risk Insurance Policy: (In case of H-M works, the term "Contractor's All Risk Insurance Policy" shall be read as "Erection All Risk (EAR) Insurance Policy".)

The Policy should cover all risks including those arising out of execution of Works for an amount equivalent to contract sum plus 20% of contract sum towards escalation due to quantity/price variation or value of work executed, whichever is greater. EAR Policy must have coverage of STFI (Storm, Typhoon, Flood & Inundation), earthquake, terrorism, burglary & third party liability (public liability) insurance.

The value of work executed shall include the value of work executed as per Deviations under Clause 33 and Price Adjustment/ Variation under Clause 73 of this Part.

Anything not covered under (a), (b), (c), (d) & (e) as above can also be included in this policy.

The Contractor shall take EAR policy for the Works for a period from the Date of commencement of works up to the Date of expiry of Defects Liability Period. However, the insurance policy shall have a provision of extension of policy period, if so required beyond the Defects Liability Period, for which premium shall be borne by Owner.

19.4 The coverage in respect of all policies will be subject to annual review and adjustment to ensure adequacy of the coverage. Losses and damages shall be payable in the same currency used to acquire the damaged or lost goods.

19.5 Without in any manner limiting its obligations and responsibilities, the Contractor shall, throughout the period of the execution of Works up to the date of completion, insure against his liability for damage, loss or injury which may occur to any property or to any person arising out of the execution of the Works.

19.6 The Contractor shall furnish to the Owner copies of all policies of insurance and

receipts for premium paid and other connected documents and in addition, shall, whenever required by the Owner, produce to the Owner/Engineer-in-charge such and other connected documents pertaining to insurance coverage and claims as the Owner/ Engineer-in- charge may require.

- 19.7 Insurance coverage is to be taken by the Contractor against all the insurable risks or events at reasonable terms & conditions. Except for deductibles and losses in excess of coverage arising out of damages caused by the Owner and/or his agencies and employees in which case the deductibles and losses in excess of coverage shall be to the account of the Owner, otherwise, all deductibles and losses in excess of coverage under any of the insurance policies shall be to the account of the Contractor.

The Contractor shall not cancel or significantly modify any or all the policies without obtaining the written approval of the Owner. The Contractor shall enter into a separate Agreement with the insurers to the effect that any or all the policies shall not be cancelled or significantly modified without the written approval of the Owner and a copy of such Agreement shall be delivered by the Contractor to the Owner.

- 19.8 The Contractor shall be liable for any damage or loss that may happen to the Works or any part thereof except the loss or damage occasioned by Force Majeure risks. Any such loss or damage shall be made good conforming to the requirements of the Contract on receipt of instructions from the Engineer-in-Charge at Contractor's cost. In case, redoing of the Works damaged or lost is decided to be not required by the Owner and such decision is notified by the Engineer-in-Charge, then the claim proceeds received from the Insurer against such loss or damage shall be passed on to the Owner.

- 19.9 If the Contractor fails to effect insurance as required in terms of this Contract and/or fails to produce to the Owner satisfactory evidence that there is the requisite insurance in respect of various matters for which it is required to effect insurance in terms of the Contract, then and in any such case, the Owner may effect and keep records of such insurance and pay such premium or premia as may be necessary for the purpose and from time to time, and deduct the amounts so paid or recover the same from any amount due to the Contractor or by encashment of bank guarantees provided by the Contractor under this Contract or otherwise.

- 19.10 The Contractor shall, save and except, if and so far as the Contract specifically provides otherwise, indemnify and keep indemnified and saved harmless, the Owner at all times in respect of all injuries, losses or damages to the person or property of the Owner, its other Contractors, their servants, agents and workmen and third parties, which may arise out of or as a consequence of the execution and maintenance of the Works or performance of the Contractor's obligations under the Contract. The indemnity hereunder shall include all costs, charges and expenses on account of any claims, demands, actions and proceedings against the Owner in respect of such injuries, loss or damage.

- 19.11 The Contractor shall be responsible for making good to the satisfaction of the Owner any loss of, and any damage to all structures and properties moveable or immovable belonging to the Owner or being executed or procured or being procured by the Owner or belonging to other agencies engaged by the Owner and working within the Site, if such loss or damage is due to the fault and/or the negligence or acts or omissions of the Contractor, his sub-Contractors and their employees, agents and representatives.

- 19.12 The Contractor shall indemnify and keep indemnified and saved harmless the Owner, against all claims for damage to property arising under or by reason of this Contract if

such claims result from the fault and/or negligence or act or omission of the Contractor, his Sub-Contractors and their employees, agents and representatives.

- 19.13 Under the Contract, the Contractor shall be responsible for loss or damage to the Works for which the Contractor is liable under the provisions of the Contract until the date of expiry of the Defects Liability Period in accordance with the provisions of the Contract.

20 SUSPENSION OF WORKS

- i) The Contractor shall, on the instructions of Engineer-in-Charge, suspend the progress of the works or any part thereof for such time and in such manner as the Engineer-in-charge may consider necessary and shall, during such suspension, properly protect and secure the works or such part thereof so far as is necessary in the opinion of the Engineer-in-charge. Unless such suspension is:
 - (a) otherwise provided for in the Contract,
 - (b) necessary by reason of some default of or breach of Contract by the Contractor or for which he is responsible,
 - (c) necessary by reason of climatic conditions on the site, or
 - (d) necessary for the proper execution of the works or for the safety of the works or any part thereof, the sub-clause 20(ii) shall apply.
- ii) Determination of the Engineer-in-charge following the suspension: - Where pursuant to sub-clause 20(i), this sub-clause applies and the Engineer-in-Charge, after due consultation with the Contractor, shall determine:-
 - (a) any extension of time to which the Contractor is entitled to under Clause 24, and
 - (b) the amount which shall be entitled to the Contractor in respect of the cost incurred by him by reason of such suspension. Such amount shall be payable to the Contractor, in accordance with GCC Clause 20 (iii) below.
- iii) Suspension
 - (a) The Employer may request the Engineer In-Charge, 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 therefore. 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 Engineer In-Charge. If, by virtue of a suspension order given by the Engineer In-Charge, other than by reason of the Contractor's default or breach of the Contract and other reasons as specified in Clause 20(i) above, 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 Engineer In-Charge 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 CC Clause 33 (Deviations), 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 Engineer In-Charge, elect to treat the suspension, where it affects a part only of the Facilities/ works, as a deletion of such part in accordance with CC Clause 33 (Deviations) or, where it affects the whole of the Facilities/ works, as termination of the Contract under CC Sub-Clause 23.1 (Termination for Employer's Convenience).

- (b) If
- (i) The Employer has failed to pay the Contractor any sum due under the Contract within the specified period, has failed to approve any invoice or supporting documents without just cause pursuant to CC Clause 52 or commits a substantial breach of the Contract, the Contractor may give a notice to the Employer that requires payment of such sum, with interest thereon as stipulated in CC Sub-Clause 55, requires approval of such invoice or supporting documents, or specifies the breach and requires the Employer to remedy the same, as the case may be. If the Employer fails to pay such sum together with such interest, fails to approve such invoice or supporting documents or give its reasons for withholding such approval, or fails to remedy the breach or take steps to remedy the breach within fourteen (14) days after receipt of the Contractor's notice or
- (ii) The Contractor is unable to carry out any of its obligations under the Contract for any reason attributable to the Employer, including but not limited to the Employer's failure to provide possession of or access to the Site or other areas in accordance with CC Sub-Clause 9, or failure to obtain any governmental permit necessary for the execution and/or completion of the Facilities/works;
- Then the Contractor may by fourteen (14) days' notice to the Employer suspend performance of all or any of its obligations under the Contract, or reduce the rate of progress.
- (c) If the Contractor's performance of its obligations is suspended or the rate of progress is reduced pursuant to this CC Clause 20, then the Time for Completion shall be extended in accordance with CC Sub-Clause 24, and any and all additional costs or expenses incurred by the Contractor as a result of such suspension or reduction as determined based on Annexure-I to CC 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 and other reasons as specified in Clause 20(i) above.
- (d) During the period of suspension, the Contractor shall not remove from the Site any Plant and Equipment, any part of the Facilities/works or any Contractor's Equipment, without the prior written consent of the Employer, which shall not be unreasonably withheld.

21 FORECLOSURE OF CONTRACT IN FULL OR PART DUE TO ABANDONMENT OR REDUCTION IN SCOPE OF WORK

- i) If, at any time after acceptance of the bid, the Corporation decides to abandon or reduce the scope of the works for reason whatsoever and hence does not require the whole or any part of the works to be carried out, the Engineer-in-Charge shall give notice in writing to that effect to the Contractor and the Contractor shall have no claim to any payment of compensation or otherwise whatsoever, on account of any profit or advantage which he might have derived from the execution of the works in full but which he could not derive in consequence of the foreclosure of the whole or part of the works.
- ii) The Contractor shall be paid at Contract rates for actual amount of the works executed at site. If any material supplied by the Corporation are rendered surplus, the same be returned by the Contractor to the Corporation. In case of failure to return the surplus materials, relevant provision at **Appendix-VI** will be made applicable.

22 TERMINATION OF CONTRACT ON DEATH

If the Contractor is an individual or a proprietary concern and if the individual or the proprietor dies, or if the Contractor is a partnership concern and one of the partner dies, then, unless the Engineer-in-Charge is satisfied that the legal representatives of the individual Contractor or the proprietor of the proprietary concern and in the case of partnership, the surviving partners are capable of carrying out and completing the Contract, the Engineer-in-Charge shall be entitled to terminate the Contract as to its incomplete part without the Corporation being, in any way, liable for payment of any compensation whatsoever on any account to the estate of the deceased Contractor and/or to the surviving partners of the Contractor's firm on account of termination of the Contract. The decision of the Engineer-in-Charge that the legal representatives of the deceased Contractor or the surviving partners of the Contractor's firm cannot carry out and complete the works under the Contract shall be final and binding on the parties. In the event of such termination, the Corporation shall not hold the estate of the deceased Contractor and/or the surviving partners of the Contractor's firm liable for damage for not completing the Contract. Provided that the power of the Engineer-in-Charge in such case of termination of Contract shall be without prejudice to any other right or remedy which shall have accrued or shall accrue to him under the Contract.

23 TERMINATION

- 23.0 The Contractor shall not neglect to execute the works with due diligence and expedition or shall not refuse or neglect to comply with any reasonable orders given to him, in writing, by the Engineer-in-Charge in connection with the works or shall not contravene the provisions of the Contract.
- 23.1 Termination for Employer's Convenience
- 23.1.1 The Employer may at any time terminate the Contract for any reason by giving the Contractor a notice of termination that refers to this CC Sub-Clause 23.1.
- 23.1.2 Upon receipt of the notice of termination under CC Sub-Clause 23.1.1, 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; and
 - (d) subject to the payment specified in CC Sub-Clause 23.1.3
 - (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; and
 - (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/works.
- 23.1.3 In the event of termination of the Contract under CC Sub-Clause 23.1.1, the Employer shall pay to the Contractor the following amounts:

- (a) The Contract Price, properly attributable to the parts of the Facilities /works 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 CC Sub-Clause 23.1.2
- (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.

23.2 Termination for Contractor's Default

23.2.1 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 CC Sub-Clause 23.2:

- (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 CC Clause 7 (Assignment and Sub-letting).
- (c) If the Contractor, in the judgment of the Employer has engaged in corrupt, collusive, coercive or fraudulent practices in competing for or in executing the Contract.

For the purpose of this Sub-Clause:

"Corrupt practice" means the offering, giving, receiving or soliciting directly or indirectly, of any thing of value to influence the action of a public official in the procurement process or in contract execution.

"Fraudulent practice" means a misrepresentation/ omission of facts in order to influence a procurement process or the execution of a contract.

"Collusive practice" means a scheme or arrangement between two or more bidders, with or without the knowledge of the Employer, designed to establish bid prices at artificial, non-competitive levels; and

"Coercive practice" means harming or threatening to harm, directly or indirectly, person or their property to influence their participation in a procurement process, or affect the execution of a contract.

23.2.2 If the Contractor

- (a) has abandoned or repudiated the Contract
- (b) has without valid reason failed to commence work on the Facilities /works promptly or has suspended (other than pursuant to CC Sub-Clause 20(iii) b) 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 labour to execute and complete the Facilities/works in the manner specified in the program furnished under CC Clause 27 at rates of progress that give reasonable assurance to the

Employer that the Contractor can attain Completion of the Facilities/works 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 CC Sub-Clause 23.2.

23.2.3 Upon receipt of the notice of termination under CC Sub-Clauses 23.2.1 or 23.2.2, 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 at 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

23.2.4 The Employer may enter upon the Site, expel the Contractor, and complete the Facilities/works 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/works 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.

23.2.5 Subject to CC Sub-Clause 23.2.6, 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 / works and in leaving the Site in a clean and safe condition pursuant to paragraph (a) of CC Sub-Clause 23.2.3. Any sums due 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.

23.2.6 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 CC Sub-Clause 23.2.5, plus the reasonable costs incurred by the Employer in completing the Facilities/works,

exceeds the Contract Price, the Contractor shall be liable for such excess. If such excess is greater than the sums due the Contractor under CC Sub-Clause 23.2.5, the Contractor shall pay the balance to the Employer, and if such excess is less than the sums due the Contractor under CC Sub-Clause 23.2.5, the Employer shall pay the balance to 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.

23.3 Termination by the Contractor

23.3.1 If

- (a) the Employer has failed to pay the Contractor any sum due under the Contract within the specified period, has failed to approve any invoice or supporting documents without just cause pursuant to CC Clause 52, or commits a substantial breach of the Contract, the Contractor may give a notice to the Employer that requires payment of such sum, with interest thereon as stipulated in CC Clause 55, requires approval of such invoice or supporting documents, or specifies the breach and requires the Employer to remedy the same, as the case may be. If the Employer fails to pay such sum together with such interest, fails to approve such invoice or supporting documents or give its reasons for withholding such approval, fails to remedy the breach or take steps to remedy the breach within fourteen (14) days after receipt of the Contractor's notice, or
- (b) the Contractor is unable to carry out any of its obligations under the Contract for any reason attributable to the Employer, including but not limited to the Employer's failure to provide possession of or access to the Site or other areas or failure to obtain any governmental permit necessary for the execution and/or completion of the Facilities, which the Employer is required to obtain as per provision of the Contract or as per relevant applicable laws of the Country.

then the Contractor may give a notice to the Employer thereof, and if the Employer has failed to pay the outstanding sum, to approve the invoice or supporting documents, to give its reasons for withholding such approval, or to remedy the breach within twenty-eight (28) days of such notice, or if the Contractor is still unable to carry out any of its obligations under the Contract for any reason attributable to the Employer within twenty-eight (28) days of the said notice, the Contractor may by a further notice to the Employer referring to this CC Sub-Clause 23.3.1, forthwith terminate the Contract.

23.3.2 The Contractor may terminate the Contract forthwith by giving a notice to the Employer to that effect, referring to this CC Sub-Clause 23.3.2, if the Employer becomes bankrupt or insolvent, has a receiving order issued against it, compounds with its creditors, or, being a corporation, if 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 Employer takes or suffers any other analogous action in consequence of debt.

23.3.3 If the Contract is terminated under CC Sub-Clauses 23.3.1 or 23.3.2, then the Contractor shall immediately

- (a) cease all further work, except for such work as may be necessary for the 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)
- (c) remove all Contractor's Equipment from the Site and repatriate the Contractor's and its Subcontractor's personnel from the Site; and
- (d) subject to the payment specified in CC Sub-Clause 23.3.4,

- (i) Deliver to the Employer the parts of the Facilities /works 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; and
- (iii) 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.

23.3.4 If the Contract is terminated under CC Sub-Clauses 23.3.1 or 23.3.2, the Employer shall pay to the Contractor all payments specified in CC Sub-Clause 23.1.3, and reasonable compensation for all loss, except for loss of profit or damage sustained by the Contractor arising out of, in connection with or in consequence of such termination.

23.3.5 Termination by the Contractor pursuant to this CC Sub-Clause 23.3 is without prejudice to any other rights or remedies of the Contractor that may be exercised in lieu of or in addition to rights conferred by CC Sub-Clause 23.3.

23.4 In this CC Clause 23, the expression "Facilities/works 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/works, up to and including the date of termination.

23.5 In this CC Clause 23, 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 CC Clause 71.

24 COMPLETION TIME AND EXTENSION

- i) Time allowed for execution of the work as specified in the Contract or the extended time, if any, in accordance with those conditions shall be the essence of the Contract. The Contractor shall so organise his resources and perform his work as to complete it not latter than the date agreed to.
- ii) The whole of the Works and, if applicable, any Section required to be completed within a particular time shall be completed, in accordance with the provisions of Clause 38, within the time stated in the Contract for the whole of the Works or the Section (as the case may be), calculated from the date specified in the Letter of Intent/ Detailed Work Order or such extended time as may be allowed under this clause.
- iii) However, if the work is delayed on account of:
 - a) Increase in quantity of work to be done under the contract as per Clause 29 or
 - b) Suspension of work as per Clause 20 for reasons attributable to the Corporation or
 - c) Rebuilding of work as per Clause No. 18, or
 - d) "Force Majeure" Clause 17, or
 - e) Non-availability of working fronts for reasons attributable to the Corporation or
 - f) Any changes in laws and regulations as provided in CC Sub-Clause 74.2 or
 - g) Any other clause which, at the absolute discretion of the Engineer-in-Charge, is beyond the Contractor's control,

Then immediately upon the happening of any such event as aforesaid, the Contractor shall inform the Engineer-in-Charge accordingly, but the Contractor shall nevertheless use constantly his best endeavours to prevent and/or make good the delay and shall do all that may be required in this regard. The Contractor shall also request, in writing, for extension of time to which he may consider himself eligible under the Contract within 40(forty) days of the date of happening of any such event as indicated above. As the

Scheduled period of execution is the essence of the work, the Contractor will be entirely responsible to keep a Hindrance register, wherein each and every record of Hindrance (in detail), which affect the work, should be maintained under joint-signatures of the Contractor and Engineer-in-Charge. Further, the Contractor shall submit the said register during submission of application for any provisional / final time extension.

However, the provisional time extension, so granted by the Corporation from time to time, will not relieve the Contractor from the payment of compensation for delay, if the Corporation feels that the overall justified time extension is less than the actual completion date and the decision of the Engineer-in-Charge shall be final and binding.

- iv) In any such case as may have arisen due to any of the events, as aforesaid, and which may have been notified by the Contractor in writing, the Engineer-in-Charge may give a fair and reasonable extension of time, after taking into consideration the nature of the work delayed and practicability of execution of the work during the period of extension

When the period fixed for completion of the Contract is about to expire, the question of extension of the Contract shall be considered based on the request in writing made by the Contractor. In case the Contractor does not apply for grant of extension of time in execution of the work and the Corporation wants to continue with the work beyond the stipulated date of completion for reasons of the work having been hindered, the Engineer-in-Charge at his sole discretion can grant provisional extension of time even in the absence of application from the Contractor. Such extension of time shall be without prejudice to right of the Corporation to levy compensation under Clause 25 hereunder.

- v) Provided also that where an event has a continuing effect such that it is not practicable for the Contractor to submit detailed particulars within the period of 40(forty) days referred to in Sub-Clause 24(iii), he shall nevertheless be entitled to an extension of time, provided that he has submitted to the Engineer-in-Charge interim particulars at intervals of not more than 40(forty) days and final particulars within 40(forty) days of the end of the effects resulting from the event. On receipt of such interim particulars, the Engineer-in-Charge shall, without undue delay, make an interim determination of extension of time and, on receipt of the final particulars, the Engineer-in-Charge shall review all the circumstances and shall determine an overall extension of time in regard to the event. In both such cases, the Engineer-in-Charge shall make his determination after due consultation with the Contractor and shall notify the Contractor of the determination.

- vi) If, for any reason, which does not entitle the Contractor to an extension of time, the rate of progress of the Works or any Section is at any time, in the opinion of the Engineer-in-Charge, too slow to comply with the Time for Completion, the Engineer-in-Charge shall so notify the Contractor, who shall thereupon take such steps as are necessary, subject to the consent of the Engineer-in-Charge, to expedite progress so as to comply with the Time for Completion. The Contractor shall not be entitled to any additional payment for taking such steps. If, as a result of any notice given by the Engineer-in-Charge under this Clause, the Contractor considers that it is necessary to do any work at night or on locally recognised days of rest, he shall be entitled to seek the consent of the Engineer-in-Charge so to do. Provided that, if any steps, taken by the Contractor in meeting his obligations under this Clause, involve the Corporation in additional supervision costs, such costs shall, after due consultation with the Corporation and the Contractor, be determined by the Engineer-in-Charge and shall be recoverable from the Contractor by the Corporation, and may be deducted by the Corporation from any amount due or to become due to the Contractor.

25 COMPENSATION FOR DELAY

- i) If the Contractor fails to complete the Works under the individual group/sub-groups as stipulated in the Approved Construction Schedule and incorporated in the Appendix-I within the stipulated time or any extended period (not due to the fault of the Contractor) as may be allowed, he shall, without prejudice to any other right or remedy of the Corporation on account of such default, pay compensation as stipulated in the Contract (Provided at **Appendix-I**).
- ii) Should, however, the Contractor achieve the completion of the entire works as a whole under the Contract within the time as stipulated in the Contract, or in the extended time (not due to the reasons default on the part of the Contractor) as may be accorded, the Corporation will refund to him the amount of compensation recovered from him, if any, in respect of delay in the non-completion of work(s) under the individual group/sub-group as aforesaid in full. In this regard the decision of the Engineer-in-Charge shall be final and binding.
- iii) The amount of compensation may be adjusted/withhold/deducted or set off against any sum payable to the Contractor under this or any other Contract with the Corporation.

26 SITE INVESTIGATION AND REPRESENTATIONS

- i) It shall be clearly understood that the Contractor has fully satisfied himself as to the nature and location of the work, the general location conditions, including those bearing upon transportation, disposal, handling and storage of materials, availability and nature of labour, availability of water etc. or similar physical conditions at site, the configuration and condition of ground, the character, quality and quantity of the surface and the sub-surface materials to be encountered, the character and capacity of equipment and facilities needed preliminary to and during the execution of the work and all other materials whichever in any way affect the work, or the cost thereof under the Contract. Any default or failure by the Contractor to acquaint himself with all the available information concerning these conditions will not relieve him from the responsibility for the execution of the Contract unless the Contract expressly provides that the responsibility for such is assumed by the Corporation.
- ii) If the drawings, specifications or description of items in the Bill of Quantities do not contain particulars of materials and work which are obviously necessary for the proper completion of the items of work specified in Bill of Quantities all such materials and works shall be supplied and executed by the Contractor without extra charge, and the Corporation will furnish such details to the Contractor with reasonable expedition after receiving a request from the Contractor in writing.

27 COMMENCEMENT OF WORK

- i) The Contractor shall commence the work(s) immediately but not later than 30 (thirty) days after the issue of Letter of Intent and shall proceed with the same without delay as may be expressly sanctioned or ordered by the Engineer-in-Charge. If the Contractor commits default in the commencement of work as aforesaid, the Engineer-in -Charge shall, without prejudice to any other right or remedy, be at liberty to cancel the Contract and forfeit the Bid Security.
- ii) The Contractor shall strictly adhere to the approved Construction Schedule/ Programme.
- iii) The Contractor shall submit along with his bid, the construction planning, phasing and sequence of construction, time and progress chart within the framework of the Construction Programme as a whole and also of each group/subgroup of work(s) showing the order or procedure and a statement showing the method and techniques of construction by which the Contractor proposes to carry out the work(s). Such chart or programme shall be prepared in direct relation to the Construction Programme as well

as the construction time stated in the Contract for completion of items of works. It shall indicate commencement and completion of various trades and sections of the work, distribution and balancing of work load pertaining to construction activities in various structures/component parts of work into the working seasons duly taking into account working months available in each working season and working and number of working days available for working months to arrive at seasonal monthly average and seasonal monthly peak progress with corresponding time periods. Such construction planning shall form an integral part of the Contract.

- iv) The Contractor shall have to strictly adhere to such an agreed planning and Programme. However, it shall not relieve the Contractor of any of his duties, obligations or responsibilities under the Contract.

28 WORKS TO BE CARRIED OUT IN ACCORDANCE WITH SPECIFICATION DRAWINGS AND ORDERS ETC

- i) The Contractor shall, with due care and diligence, design (to the extent provided for by the Contract), execute and complete the Works and remedy any defects therein in accordance with the provisions of the Contract. The Contractor shall provide all supervision, labour, materials, Plant, Contractor's Equipment and all other things, whether of a temporary or permanent nature, required in and for such design, execution, completion and remedying of any defects, so far as the necessity for providing the same is specified in or is reasonably to be inferred from the Contract. The Contractor shall give prompt notice to the Engineer-in-Charge of any error, omission, fault or other defect in the design of or Specification for the Works which he discovers when reviewing the Contract or executing the Works.
- ii) The Contractor shall execute the whole and every part of the work in the most substantial and workman like manner and both as regards materials and otherwise in every respect in strict conformity with the specification laid down by the Engineer-in-Charge under the terms and conditions of the Contract. The Contractor shall also conform exactly, fully and faithfully to the designs, drawings, specifications and instructions in writing in respect of the work duly signed by the Engineer-in-Charge as may be issued from time to time.
- iii) The Contractor shall be entitled to receive, on demand and in addition to the Contract documents in accordance with the provisions of Clause 5 set forth herein, in respect of the Works on commencement or during performance of the Contract:
 - a) Detailed/Construction drawings and revisions thereto – 3 sets.
 - b) Specifications or revisions thereof other than standard printed specifications – 2 sets.
 - c) Explanations, instructions etc. - 1 copy.

Such further drawings, explanations, modification and instructions as the Engineer-in-Charge may issue from time to time in respect of the Works, shall be deemed to form integral part of the Contract and the Contractor shall be bound to carry out the work accordingly.
- iv) Where the Contract expressly provides that part of the Permanent Works shall be designed by the Contractor, he shall submit to the Engineer-in-Charge, for approval:
 - a) such drawings, specifications, calculations and other information as shall be necessary to satisfy the Engineer-in-Charge as to the suitability and adequacy of that design and
 - b) Operation and Maintenance manuals together with drawings of the Permanent Works as completed, in sufficient detail to enable the Corporation to operate,

maintain, dismantle, reassemble and adjust the Permanent Works incorporating that design.

The Works shall not be considered to be completed for the purposes of completion in accordance with Clause 38 until such operation and maintenance manuals, together with drawings on completion, have been submitted to and approved by the Engineer-in-Charge.

- v) Approval by the Engineer-in-Charge, in accordance with the above Sub-Clause-28(iv), shall not relieve the Contractor of any of his responsibilities under the Contract.
- vi) All instructions and orders in respect of the work shall be given by the Engineer-in-Charge in writing. However, verbal instructions or orders shall be deemed to be valid provided they are confirmed in writing by the Engineer-in-Charge as soon as practicable and without loss of time. The Engineer-In-Charge's decision shall be final in resolving any disputes or conflicts between the Contractor and other Contractors and tradesmen of the Corporation regarding scheduling and co-ordination of works. Such decision by the Engineer-in-Charge shall not be a cause for extra compensation or extension of time for the Contractor.

29 VARIATION IN THE VALUE OF WORK BEYOND CONTRACT SUM DUE TO VARIATION IN QUANTITY AGAINST SCHEDULE ITEMS OF WORK

- i) The quantities indicated in Bill of Quantities shall be treated as approximate and only for comparing Bids. The Contractor shall execute the entire quantity of work required for completing the job as per specifications, drawings and direction of Engineer-in-Charge at the rates entered in the Bill/Schedule of Quantities, subject to the provisions of Clause 29 (iii), Part-III (Conditions of Contract) of Bid document; and rates of other items to be regulated by Clause 33, Part-III (Conditions of Contract) of Bid document, wherever applicable.
- ii) Cost of Materials and components not specifically stated in any items of BOQ but are necessary for satisfactory completion of the said item of works as per Technical Specification in all respect, shall be deemed to have been included in the scope of work, for which no extra claim shall be entertained.
- iii) If any item of work appearing in the BOQ is increased by more than 25% of the quantity of that item and this change in quantity (ie. quantity increasing over 1.25 times of BOQ quantity) multiplied by the BOQ rate exceeds 0.25% of the contract price, then the rate of the said item shall be revised as per sub-clause 33(ii) (c) here under. The new rate shall be applicable only for the quantity executed in excess of 1.25 times of the BOQ quantity.

Further, if the quantity of any item, gets reduced by more than 25% of the quantity provided in the BOQ then the total payment for the reduced quantity of that item shall be payable at the revised rate as per sub-clause 33(ii)(c). However, value of total payment against such reduced quantity of items at revised rate shall be limited to the payment admissible for 75% quantity of the said item at the rate provided in the BOQ.
- iv) No permissible variation limit for any individual BOQ item, has been specified in these Conditions. Contractor shall complete the entire work as per drawing, specification and direction of Engineer-In-Charge, irrespective of any extent of quantity deviation (+ or -) in BOQ items with respect to the ordered quantity.
- v) The Contractor shall be entitled for payment for the work actually done by him as per the procedure mentioned above. No claim for any work included in the Contract, but

not done by him either in part or in full, will be entertained.

30 SETTING OUT OF THE WORK

- i) The Contractor shall be responsible for:
 - a) the accurate setting-out of the Works in relation to original points, lines and levels of reference given by the Engineer-in-Charge in writing,
 - b) the correctness, subject as above mentioned, of the position, levels, dimensions and alignment of all parts of the Works, and
 - c) the provision of all necessary instruments, appliances and labour in connection with the foregoing responsibilities.
- ii) If, at any time during the execution of the Works, any error appears in the position, levels, dimensions or alignment of any part of the Works, the Contractor, on being required to do so by the Engineer-in-Charge shall, at his own cost, rectify such error to the satisfaction of the Engineer-in-Charge, unless such error is based on incorrect data supplied in writing by the Engineer-in-Charge, in which case the Engineer-in-Charge shall determine an addition to the Contract Price in accordance with Clause 33 and shall notify the Contractor accordingly.
- iii) The checking of any setting-out or of any line or level by the Engineer-in-Charge shall not in any way relieve the Contractor of his responsibility for the accuracy thereof and the Contractor shall carefully protect and preserve all bench-marks, sight-rails, pegs and other things used in setting-out the Works.

31 URGENT WORKS

If any urgent work (in respect of which, the decision of the Engineer-in-Charge shall be final and binding) becomes necessary, the Contractor shall execute the same as may be directed.

32 DATA TO BE FURNISHED BY THE CONTRACTOR

- i) The log book of working machinery shall be properly maintained and any information concerning operation and maintenance of machinery shall be furnished to the Engineer-in-Charge, as and when required, alongwith information on similar nature, if required.
- ii) In case power is supplied by the Corporation, an updated programme of requirement of electric power with reference to the approved Construction Programme shall be submitted to the Engineer-in-Charge at least 25 (twenty five) days before the commencement of the actual execution of the Works.
- iii) The detailed methodology of execution and the equipment required for the Works or group or sub-group of the Works shall be submitted by the Contractor to the Engineer-in-Charge at least 25(twenty five) days before the programmed date of execution, if the Contractor has not submitted the same earlier. In case a preliminary methodology has been submitted by the Contractor, the same may be elaborated or revised, considering the actual site condition and early completion of the work. Any heavy or special equipment required by the Contractor for this work shall be arranged by the Contractor well in advance to avoid delay.
- iv) If, at any time, it should appear to the Engineer-in-Charge that the actual progress of the Works does not conform to the programme to which consent has been given under Sub-Clause 27(ii), the Contractor shall produce, at the request of the Engineer-in-Charge, a revised programme showing the modifications to such programme necessary to ensure completion of the Works within the time allowed for execution of the work.

- v) The Contractor shall, within 28 (twenty eight) days after the date of the Letter of intent, provide to the Engineer-in-Charge for his information a detailed cash flow estimate, in quarterly periods, of all payments to which the Contractor will be entitled under the Contract and the Contractor shall subsequently supply revised cash flow estimates at quarterly intervals, if required to do so by the Engineer-in Charge.
- vi) The submission to and consent by the Engineer-in-Charge of such programmes or the provision of such general descriptions or cash flow estimates shall not relieve the Contractor of any of his duties or responsibilities under the Contract.

33 DEVIATIONS

- i) The Engineer-in-Charge shall have power to make any deviations in the original specifications or drawings or designs of the scope of works or any part thereof that are, in his opinion, necessary at the time of or during the course of execution of the Works. In the aforesaid purpose or for any other reason, if it shall, in the opinion of the Engineer-in-Charge, be desirable, he will also have the powers to make deviations, such as:

- a) variations,
- b) extra item,
- c) additions/omissions and
- d) alterations or substitution of any kind.

No such deviations in the specifications or drawings or designs or Bill of Quantities, as aforesaid, shall, in any way, vitiate or invalidate the Contract and any such deviations which the Contractor may be directed to do shall form integral part of the Contract as if originally provided therein, and the Contractor shall carry out the same on the same conditions in all respects on which he agreed to do the works under the Contract.

- ii) The rates for such items of works as required to be executed due to deviations as stated in sub-clause, shall be evaluated in the following sequence:

- a) The rates already provided in the Bill of Quantities shall apply in respect of the same item(s) of work to be executed due to variation, subject to the provisions of Clause 29.
- b) In case of items for which rates are not available in the Bill of Quantities, the rates of such items, as far as practicable, shall be derived from the contracted rates of analogous /similar item(s) in the Bill of Quantities after submission of details by the Contractor after actual observation at Site. The decision to select analogous/similar item(s) shall be taken by the Engineer-in-Charge, which shall be conclusive and binding on the Contractor.

Items whose rates are identified as abnormally high (AHR) shall not be taken as reference to evaluate rates of such extra, substituted items etc.

- c) In the cases, where analogous/similar items are not available in the Bill of Quantities, such items shall be termed as extra items. The Contractor, within 14 days (or as agreed by the Engineer-in-Charge) from the receipt of order to execute such items, shall submit rate analysis to the Engineer-in-Charge supported by documentary evidence of basic rates adopted therein, notwithstanding the fact that the rates for such items exist in the Contract; having regard to the cost of materials, actual wages of labour and ownership & operational cost of Construction Equipment required as per standard norms or if standard norms are not

specified/available then on the basis of labour/materials/Construction Equipment actually engaged for the particular work. The standard norms for including Indirect Charges for labour and material specified herein shall mean as those specified in "Guidelines for preparation of Project Estimates for River Valley Projects (latest version)" of Central Water Commission, Govt. of India, and if not available therein, then those of State's Public Works Department. Standard norms for Construction Equipment use shall mean those of Bureau of Indian Standards (IS: 11590: 1995 – latest version) and if not available therein, then those specified in "Guidelines for preparation of Project Estimates for River Valley Projects (latest version)" of Central Water Commission, Govt. of India.

Over and above the cost of labour, materials arranged by the Contractor and ownership & operational cost of Construction Equipment, an element of 20% shall be allowed to cover the Contractor's overheads, profits, and supervision charges.

However, for materials issued by the Corporation to the Contractor and/or Construction Equipment supplied on rental charge(s) by Corporation to the Contractor during the course of execution of Works, the Contractor shall be entitled to only 10% (ten percent) of such costs to cover transportation, overheads, supervision, profits etc. The Corporation shall examine the rate analysis submitted by the Contractor and fix the rates accordingly.

- (iii) If there is delay in the Corporation and the Contractor coming to an agreement on the rate of extra, altered, substituted items of work, provisional rates @ 75% (in case of extra works executed at BOQ rates or analogous rates) and 50% (in case of extra works executed as per analyzed rates) of the rates as determined by the Corporation shall be payable till such time as the rates are finally determined. In any case the Corporation shall decide the rates within a maximum period of 90 (ninety) days from the date of submission of the analysis of rates by the Contractor. Under no circumstances, the Contractor shall, at any stage, suspend the work on account of non-settlement of rates of such deviated items.
- iv) Items of Work for which rates have been derived as per clause 33 (ii) (a) & (b) above, shall be eligible for price adjustment as per clause 74 of this Part with Base date corresponding to 28 days prior to the latest date of submission of bids.
- iv) Items of Work for which rates have been derived as per clause 33 (ii) (c) above, shall remain firm (no price variation shall apply) upto a period of 12(twelve) months from the date of commencement of such work. If such items of work continues beyond this period of 12(twelve) months, rates for the part of the extra works that continued beyond 12 (twelve) months shall be eligible for Price adjustment as per clause 74 of this Part with Base date corresponding to the date of input cost considered for working out the rates.
- v) In case the geological ground conditions are substantially adverse than those specified in the Contract, then the change in design/drawings necessitated by such adverse geological conditions shall be issued by the Engineer-in-Charge within 30 days of encountering of such adverse geological conditions. The instructions of Engineer-in-Charge for dealing with such geological conditions shall generally include broad description of new/extra items of works required therefor. The method statement for handling such geological conditions shall be submitted by the Contractor within a period of 15 days of the date of receipt of instructions from the Engineer-in-Charge. However, in case where no such instruction is issued by the Engineer-in-Charge within a period of 30 days, then the Contractor shall firm up his own technical proposal within next 30 days for handling such geological conditions including design/drawing, construction schedule,

construction equipment, specialized agencies required for dealing with such adverse ground conditions and tentative cost thereof. The Engineer-in-Charge shall communicate, in-principle, decision on the proposal of Contractor within 30 days of receipt of proposal from the Contractor with the instructions to commence works immediately and for submission of details of financial proposal (price/rates/cost) associated with handling such geological conditions. Contractor's financial proposal shall be finalized by the Engineer-in-Charge within 90 days of receipt of the same from the Contractor as per provisions of sub-clause 33 (ii) (c) hereinabove.

34 PATENTS AND/OR COPYRIGHTS

The Contractor shall hold and save the Corporation, its Officers, Agents, servants and employees harmless from liabilities of any nature or kind, including cost and expenses on account of any copyrighted composition, secret process, patented or unpatented invention, article or appliance manufactured or used in the performance of the Contract including their use in the Corporation, unless otherwise specifically stipulated in the Contract. On any patented invention, the use of which by these specifications is required or permitted in the alternative to be used, and which the Government of India has the right to use, royalty free use shall be available to the Contractor without the payment of royalty. In the event of any claim being made or action brought against the Corporation in respect of any such matter as aforesaid, the Contractor with the assistance of the Corporation, if required, but at his own expense, shall conduct all negotiations for settlement of the same or any litigation that may arise there from.

35 LABOUR

- i) The Contractor shall, unless otherwise provided in the Contract, make his own arrangements for the engagement of all staff and labour, local or other, and for their payment, housing, feeding and transport. The Contractor shall employ labour in sufficient numbers to maintain the required rates of progress and quality to ensure workmanship of the degree specified in the contract and to the satisfaction of the Engineer-in-Charge. The Contractor shall not employ, in connection with the works, any person who has not completed 18 (eighteen) years of age.
- ii) The Contractor shall not recruit or attempt to recruit his staff and labour from among persons in the service of the Corporation.
- iii) The Contractor shall be responsible for return to the place where they were recruited or to their domicile of all such persons as he recruited and employed for the purposes of or in connection with the Contract and shall maintain such persons as are to be so returned in a suitable manner until they shall have left the site or, in the case of persons who are not nationals of India and have been recruited outside India, shall have left India.
- iv) The Contractor shall, at all times, take the necessary precautions to protect all staff and labour employed on the Site from insect nuisance, rats, and other pests and reduce the dangers to health and the general nuisance caused by the same. The Contractor shall provide his staff and labour with suitable prophylactics for the prevention of malaria, and shall take steps to prevent the formation of stagnant pools of water. He shall comply with all the regulations of the local health authorities in these respects and shall, in particular, arrange to spray thoroughly with approved insecticide all buildings erected on the Site. Such treatment shall be carried out at least once a year or as instructed by the Engineer-in-Charge. The Contractor shall warn his staff and labour of the dangers of bilharzias and wild animals.
- v) In the event of any outbreak of illness of an epidemic nature, the Contractor shall comply with and carry out such regulations, orders, and requirements as may be made by the

- Government or the local medical or sanitary authorities for the purpose of dealing with and overcoming the same.
- vi) The Contractor shall make any necessary arrangements for the transport, to any place as required for burial, of any of his expatriate employees or members of their families who may die in India. The Contractor shall also be responsible, to the extent required by the local regulations, for making any arrangements with regard to burial of any of his local employees who may die while engaged upon the Works.
- vii) The Contractor shall arrange for the provision of a sufficient supply of suitable food at reasonable prices for all his staff, labour, and Sub-Contractors for the purposes of or in connection with the Contract.
- viii) The Contractor shall not, otherwise than in accordance with the Statutes, Ordinances, and Government Regulations or Orders for the time being in force, import, sell, give, barter, or otherwise dispose of any alcoholic liquor or drugs, or permit or suffer any such importation, sale, gift, barter, or disposal by his sub-contractors, agents, staff, or labour.
- ix) The Contractor shall not give, barter, or otherwise dispose of, to any person or persons, any arms or ammunition of any kind or permit or suffer the same as aforesaid.
- x) The Contractor shall, in all dealings with his staff and labour, have due regard to all recognized festivals, days of rest, and religious and other customs.
- xi) The Contractor shall, at all times, take all reasonable precautions to prevent any unlawful, riotous, or disorderly conduct by or among his staff and labour and take all reasonable precautions for the preservation of peace and protection of persons and property in the neighbourhood of the Works against the same.
- xii) The Contractor shall report to the Engineer-in-Charge details of any accident as soon as possible after its occurrence. In the case of any fatality or serious accident, the Contractor shall, in addition, notify the Engineer-in-Charge immediately by the quickest available means.
- xiii) The Contractor shall deliver to the Engineer-in-Charge a return in detail, in such form and at such intervals as the Engineer-in-Charge may prescribe, showing the staff and the numbers of the several classes of labour from time to time employed by the Contractor on the Site.
- xiv) The Contractor shall furnish and deliver fortnightly to the Engineer-in-Charge a statement in respect of the followings for the preceding fortnight:
- a) Accidents that have occurred during the fortnight indicating the circumstances under which the accident occurred, and the extent of damage and injury so caused.
 - b) The number of female workers who have been allowed maternity benefit as provided in the Maternity Benefit Act, 1961 or Rules made there under and the amount paid to them.
- xv) The Contractor shall pay to labour employed to him, either directly or through Sub-Contractors, wages as defined in the Contract Labour (Regulation and Abolition) Act, 1970 with general Rules framed there under and amendments made from time to time.
- xvi) The Contractor shall, in respect of labour employed by him either directly or through sub-contractors, comply with or cause to be complied with the Contract Labour (Regulation and Abolition) Act, 1970 and Rules framed there under in regard to all matters provided therein.
- xvii) The Contractor shall comply with the provisions of all the Acts, Laws, any Regulation or Bye-laws of any local or other statutory Authority applicable in relation to the execution of the works, such as:
- a) Payment of wages Act, 1936 (Amended).

- b) Minimum wages Act, 1948 (Amended).
- c) The Contract Labour (Regulation and Abolition) Act, 1970 with rules framed there under as amended.
- d) Workman Compensation Act, 1923 as amended by Amendment Act, No.65 of 1976.
- e) Corporation's Liability Act, 1938 (Amended).
- f) Maternity Benefit Act, 1961 (Amended).
- g) The Industrial Employment (Standing Orders) Act, 1946 (Amended).
- h) The Industrial Disputes Act, 1947 (Amended).
- i) Payment of Bonus Act, 1965 and Amendment Act No.43 of 1977 and No.48 of 1978 and any amendments thereof.
- j) The Personal Injuries (Compensation Insurance) Act, 1963 and any modification thereof and Rules made there under from time to time. The Contractor shall take into account all the above said financial liabilities in his quoted rates and nothing extra whatsoever, shall be payable to him on this account.
- k) E.P.F. and M.P. Act, 1952
- l) The Building & Other Construction Workers (Regulation of Employment & Conditions of Service) Act, 1996
- m) Forest Conservation Act '1980 and subsequent amendment thereof.
- n) Environment (Protection) Act '1986 and subsequent amendment thereof.
- xviii) The Contractor shall be liable to pay his contribution and employees contribution to the state insurance scheme in respect of all labour employed by him for the execution of the Contract in accordance with the provision of the "Employees State Insurance Act, 1948" as amended from time to time. In case the Contractor fails to submit full details of his account of labour employed and the contribution payable, the Engineer-in-Charge shall recover from the running bills of the Contractor an amount of contribution as assessed by him, the amount so recovered shall be adjusted against the actual contribution payable for employees state insurance.
- xix) The Engineer-in-Charge shall, on a report having been made by an Inspecting Officer as defined in the Contract Labour (Regulation and Abolition) Act and Rules or on his own, in his capacity as Principal Employer, have the power to deduct from the amount due to the Contractor any sum required or estimated to be required for making good any loss suffered by worker(s) by reason of non-fulfilment of the conditions of the Contract for the benefit of workers or non-payment of wages or of deductions made from him for wages, which are not justified by the terms of the Contract or non-observance of the said Act, and Rules framed there under with amendments from time to time.
- xx) The Contractor shall indemnify the Corporation against any payments to be made under and for observance of the Regulations, Laws, Rules, as stipulated in Clause 35(xvii) above, without prejudice to his right to claim indemnity from his Sub-Contractors. In the event of the Contractor's failure to comply with the provisions of all the Acts/Laws stipulated in Clause 35(xvii), or in the event of decree or award of order against the Contractor having been received from the competent authority on account of any default or breach or in connection with any of the provisions of the Act/Law/Rules mentioned above, the Engineer-in-Charge, without prejudice to any other right or remedy under the Contract, shall be empowered to deduct such sum(s) from the bills of the Contractor or from his Security Deposit or from other payment due under the Contract or any other contract to satisfy within a reasonable time the provisions of the various Acts/ Laws/ Rules/ Codes as mentioned under sub-clause 35.xvii) above, on part of the Contractor

- under the Contract on behalf of and under the expenses of the Contractor and make payment and/or provide amenities/facilities/services accordingly. In this regard, the decision of the Engineer-in-Charge shall be conclusive and binding on the Contractor.
- xxi) In the event of the Contractor committing a default or breach of any of the provisions of the aforesaid Contract Labour (Regulation and Abolition) Act, and Rules as amended from time to time or furnishing any information or submitting or filling any Form/Register/Slip under the provisions of these regulations which is materially incorrect, then, on the report of the Inspecting Officers as defined in the relevant Acts and Rules as referred above, the Contractor shall, without prejudice to any other liability, pay to the Corporation a sum not exceeding the amount as stipulated in the relevant Labour act as Liquidated Damage for every default, breach, or furnishing, making, submitting, filling materially incorrect statement as may be fixed by the Engineer-in-Charge. However, if Contractor's default is continuing in this respect, the Liquidation Damage may be enhanced for each day of default, subject to a maximum of 5% (five percent) of the estimated cost of the Works put to tender. The Engineer-in-Charge shall deduct such amount from bills or Security Deposit of the Contractor and credit the same to the Welfare Fund constituted under the regulations. The decision of the Engineer-in-Charge in this respect shall be final.
- xxii) The Contractor shall, at his own expense, comply with or cause to be complied with the Provisions/Rules provided for welfare and health of Contract labour (Regulation and Abolition) Act and other relevant Acts and Rules framed there under or any other instructions issued by the Corporation in this regard, including, but not limited to, the provisions set out in Appendix II "Labour Welfare" of this Part, for the protection of health and for making sanitary arrangements for workers employed directly or indirectly on the works. In case the Contractor fails to make arrangements as aforesaid, the Engineer-in-Charge shall be entitled to do so and recover the cost thereof from the Contractor.
- xxiii) The Contractor shall, at his own expense, arrange for safety provisions as laid down in the Safety Manual of the Corporation enclosed as Appendix III "Safety Engineering & Safety Code" of this Part or as required by the Engineer-in-Charge in respect of all labour directly or indirectly employed for performance of the Works and shall provide all facilities in connection therewith. In case the Contractor fails to make arrangements and provide necessary facilities as aforesaid, the Engineer-in-Charge shall be entitled to do so and recover the cost thereof from the Contractor. However, this will not absolve the Contractor of his responsibility or otherwise thereof.
- xxiv) Failure to comply with "Provisions/Rules made for welfare and health of Contract Labour," including, but not limited to, the provisions as set out in Appendix II "Labour Welfare" of this Part and the Corporation's Safety Manual as enclosed in **Appendix III** "Safety Engineering & Safety Code" of this Part or the provisions relating to report on accidents and grants of maternity benefits to female workers and all the relevant Acts/Rules referred in Clause No. 35.(xvii) above, shall make the Contractor liable to pay the Corporation as Liquidated Damage an amount of Rs.50/- or as provided in the relevant Regulation/Act, whichever is higher, for each default or materially incorrect statements. The decisions of the Engineer-in-Charge in such matters based on reports from the Inspecting Officers as defined in relevant Acts and Rules as referred in Clause No. 35.(x vii) above shall be final and binding and deductions for recovery of such Liquidated Damage may be made from any amount payable to the Contractor. In the event of any injury, disability or death of any workman in or about the worker employed by the Contractor either directly or through his Sub-Contractor, the Contractor shall, at all times, indemnify and save harmless the Corporation against all claims, damages and compensation under the Workman's Compensation Act, 1923 as amended from time to

time, or in other law for the time being in force and Rules there under from time to time, and also against all cost, charges and expenses of any such action or proceeding arising out of such accidents or injury, disability or death of a workman and against all sum or sums which may, at the consent of the Contractor, be paid to compromise or compensate any claim in this respect. If any award, decree or order is passed against the Contractor for recovery of any compensation under the Workman's Compensation Act, 1923, for the injury, disability or death by any competent court, the said sum or sums shall be deducted by the Engineer-in-Charge from any sum that are due or that may become due to the Contractor or from his Security Deposit or sale thereof in full or part under the Contract, or any other Contract with Corporation towards fulfilment of the said decree, award or orders.

- xxv) The Contractor shall submit to the Engineer-in-Charge a complete list of foreign field personnel (including necessary data as may be requested by the Engineer-in-Charge) required for the performance of the works in India. He shall also intimate the programme of their visit to and departure from India during the currency of the Contract. The Engineer-in-Charge shall have the right to review the list of such personnel and ask for increase in strength or re-schedule the visit of such personnel for effective performance of the Contract.
- xxvi) The Contractor shall have no right to demand payments/claims whatsoever on account of his compliance with his obligations under this clause and labour regulations, except those specifically mentioned in the clause pertaining to price adjustment/variation.
- xxvii) Adequate alternate fuel arrangement should be made for the labour force engaged in the construction work at Project site, so that indiscriminate felling of trees is prevented.
- xxviii) The Contractor should ensure that all the labourers to be engaged for construction works should be thoroughly examined by Health Personnel and adequately treated before issuing them work permit for the Project.

36 REMOVAL OF CONTRACTOR'S MAN

The Contractor shall employ, for execution of the works, only such persons as are skilled and experienced in their respective trades and the Engineer-in-Charge shall be at liberty to object to and require the Contractor to remove from the works any person employed by the Contractor for the execution of the Works who, in the opinion of the Engineer-in-Charge indulges in any misconduct or is incompetent or negligent in proper performance of his duties. The Contractor shall forthwith comply with such instructions and such persons shall not be again employed in the Works without permission of the Engineer-in-Charge.

37 INSPECTION AND APPROVAL

- i) All works embracing more than 1 (one) process shall be subject to examination and approval at each stage thereof and the Contractor shall give due notice to the Engineer-in-Charge or his authorised representative, when its stage is ready. In default of such notice, the Engineer-in-Charge shall be entitled to appraise the quality and extent thereof and the decision of the Engineer-in-Charge in this regard shall be final and binding.
- ii) No work shall be covered or put out of view without the approval of the Engineer-in-Charge or his authorised representative and the Contractor shall afford full opportunity for examination of foundations before permanent works is placed thereon. The Contractor shall give due notice to the Engineer-in-Charge or his authorised representative whenever any such work of foundation is ready for examination, and the Engineer-in-Charge or his authorised representative shall, without unreasonable delay, unless he considers it unnecessary and advises the Contractor accordingly, examine

and measure such works or such foundations. In the event of failure of the Contractor to give such notice, he shall, if required by the Engineer-in-Charge, uncover such works at his own expense.

- iii) The Engineer-in-Charge or his representative shall have power at any time to inspect and examine any part of the works and the Contractor shall provide all facilities as may be required for such inspection and examination.
- iv) The Contractor shall uncover any part of the works and/or make opening in or through the same as the Engineer-in-Charge may, from time to time, direct for his verification and shall reinstate and make good such part to the satisfaction of the Engineer-in-Charge. If any such part has been covered up or put out of view after being approved of by the Engineer-in-Charge and is subsequently found, on uncovering, to be executed in accordance with the Contract, the expenditure for uncovering and/or making openings in or through, reinstating and making good the same, shall be borne by the Corporation. In any other causes, all such expenses shall be borne by the Contractor.

38 COMPLETION CERTIFICATE

- i) The work shall be completed to the entire satisfaction of the Engineer-in-Charge and in accordance with the time mentioned in the Contract. As soon as the work under the Contract is completed as a whole, the Contractor shall give notice of such completion to the Engineer-in-Charge alongwith an undertaking to complete any outstanding work during the Defects Liability Period. The Engineer-in-Charge, within thirty (30) days of receipt of such notice, shall inspect the work and shall satisfy himself that the Work(s) has been completed in accordance with the provisions of the Contract and then issue to the Contractor a Certificate of Completion indicating the date of completion. Should the Engineer-in-Charge notice that there are defects in the works or the works are not considered to be completed, he shall issue a notice in writing to the Contractor to rectify/replace the defective work or any part thereof or complete the work, as the case may be, within such time as may be notified and after the Contractor has complied with as aforesaid and gives notice of completion, the Engineer-in-Charge shall inspect the work and issue completion certificate in the same manner as aforesaid.
- ii) No Certificate of Completion shall be issued as stipulated under Clause No. 38.(i) above and no work be considered to be completed, unless the Contractor shall have removed from the work site and/or premises all his belongings/temporary arrangements brought/made by him for the purpose of execution of the work and cleared the site and/or premises in all respects and made the whole of the site and/or premises fit for immediate occupation/use to the satisfaction of the Engineer-in-Charge. If the Contractor fails to comply with the above-mentioned requirements on or before the date of completion of the work, the Engineer-in-Charge may, as he thinks fit at the risk and cost of the Contractor, fulfil such requirements and remove/dispose of the Contractor's belongings/temporary arrangements as aforesaid, and the Contractor shall have no claim in this respect, except for any sum realised by the sale of the Contractor's belongings/temporary arrangements, less the cost of fulfilling the said requirements, and for any other amount that may be due from the Contractor, should the expenditure on the aforesaid account exceed the amount realised by sale of such Contractor's belongings/temporary arrangements, the Contractor shall, on demand of the Engineer-in-Charge, pay the amount of such excess expenditure.

39 PIECE WORKERS :

Nothing contained in the Contract shall create any contractual relation between any piece worker employed by the Contractor and the Corporation.

40 COMPLETION OF SECTIONS OR PARTS:

- i) Similarly, in accordance with the procedure set out in Sub-Clause 38, the Contractor may request the Engineer-in-Charge to issue a Completion Certificate in respect of:
 - a) any Section in respect of which a separate Time for Completion is provided in the Contract.
 - b) any substantial part of the Permanent Works which has been both completed to the satisfaction of the Engineer-in-Charge and, other than as provided for in the Contract, occupied or used by the Corporation, or
 - c) any part of the Permanent Works which the Corporation has elected to occupy or use prior to completion (where such prior occupation or use is not provided for in the Contract or has not been agreed by the Contractor as a temporary measure).
- ii) If any part of the Permanent Works has been completed and has satisfactorily passed any Tests on Completion prescribed by the Contract, the Engineer-in-Charge may issue a Completion Certificate in respect of that part of the Permanent Works before completion of the whole of the Works and, upon the issue of such Certificate, the Contractor shall be deemed to have undertaken to complete with due expedition any outstanding work in that part of the Permanent Works during the Defects Liability Period.
- iii) A Completion Certificate given in respect of any Section or part of the Permanent Works before completion of the whole of the Works shall not be deemed to certify completion of any ground or surfaces requiring reinstatement, unless such Completion Certificate shall expressly so state.

41. CONSTRUCTION PLANT AND EQUIPMENT

- (i) The Contractor shall provide and install all necessary construction plant, equipment and machinery required for the execution of the work under the Contract unless otherwise specified, at his cost and shall use such methods and appliances for the purpose of all the operations connected with the work covered by the Contract which shall ensure the completion of the Work(s) within the specified time.
- (ii) The bidder shall submit full details of his construction plant, equipment and machinery proposed to be deployed for the Works alongwith its planning schedule, showing month-wise phasing, in accordance with the Construction Programme.
- (iii) The construction plant, equipment and machinery schedule, as submitted, shall be mutually discussed and finalised with the successful bidder and approved before award of Work, and these shall form an integral part of the Contract.
- (iv) The Contractor shall have to adhere to the deployment Schedule of construction plant, equipment and machinery, as approved by the Engineer-in-Charge, in the following cases:
 - a. In view of geological and design considerations, any change in equipment to be used becomes justified.
 - b. Any other reason for which the scope of work changes either in terms of quantities or terms, and
 - c. If the construction Schedule itself is, for any reason, updated and changed and is binding on the Contractor in terms of the Contract.
- (v) The Contractor shall have to certify the requirement, utility, performance and dependability of the proposed construction plant and equipment and machinery for bonafide execution of the Work. He shall give an undertaking, accepting full responsibility for proper installation, testing, commissioning and maintaining the same in good working condition throughout the Contract period. Equipment/ Machinery shall

- be maintained in good working condition and AMC of the equipment shall be given to Original Equipment Manufacturer (OEM). Proper supply of spare parts, accessories and maintenance arrangements shall be entirely the responsibility of the Contractor.
- (vi) The Contractor shall submit the following information in triplicate to the Engineer-in-Charge for approval within the time stipulated against each item.
- a. The general layout plan of construction plant and equipment for the execution of the work, within 30 (thirty) days after the issue of the Letter of Intent.
 - b. Detailed drawings showing the location of major plant and other facilities which he proposes to put up at the Site including any changes in the general layout, at least 30 (thirty) days prior to the commencement of the respective work.
- (vii) Provided always that any such approval mentioned in Sub-Clauses No. 41(vi)a) & b) of this Part shall not absolve the Contractor of his obligation for the execution and timely completion of the Contract.
- (viii) Subject to the availability of any item of Corporation's plant and equipment and machinery and at the written request of the Contractor, such plant and equipment and machinery may be issued to the Contractor on hire for being deployed on the work contracted for, at pre-determined rates, terms and conditions at the sole discretion of the Engineer-in-Charge.

42. ACCELERATION

- (i) If, at any time, it should appear to the Engineer-in-Charge that the actual progress of the Works does not conform to the programme to which consent has been given under Sub-Clause 27(ii), the Contractor shall produce, at the request of the Engineer-in-Charge, a revised programme showing the modifications to such programme necessary to accelerate the progress of works to ensure completion of the Works within the time allowed for execution of the work. Contractor shall not be entitled for any additional payment for following such revised programme.
- (ii) When the Corporation wants the Contractor to finish before the time allowed for execution of the work, the Engineer-in-Charge will obtain priced proposal for achieving the necessary acceleration from the Contractor. If the Corporation accept these proposals, the time allowed for execution of the Work will be adjusted accordingly and confirmed by both the Corporation and Contractor.
- If the Contractor's priced proposals for acceleration are accepted by the Corporation, they will be incorporated in the Contract Sum and treated as a variation.

43. DELAYS ORDERED

The Engineer-in-Charge may instruct the Contractor to delay the start or progress of any activity within the Works.

44. MANAGEMENT MEETINGS

- (i) Either the Engineer-in-Charge or the Contractor may require the other to attend management meetings, as and when required. The business of a management meeting shall be to review the plans for remaining work and to deal with matters raised in accordance with the early warning procedure.
- (ii) The Engineer-in-Charge shall record the business of management meetings and is to provide copies of his record to those attending the meeting and to the Contractor. The responsibility of the parties for actions to be taken is to be decided by the Engineer-in-Charge either at the management meeting or after the management meeting and stated

in writing to all who attended the meeting. The Contractor shall attend such meetings at their own cost.

45. EARLY WARNING:

- (i) The Contractor is to warn the Engineer-in-Charge, at the earliest opportunity, on specific likely future events or circumstances that may adversely affect the quality of the Works, increase the Contract Sum or delay the execution of works. The Engineer-in-Charge may require the Contractor to provide an estimate of the expected effect of the future event or circumstance on the Contract Sum and Completion Date. The estimate is to be provided by the Contractor as soon as reasonably possible.
- (ii) The Contractor shall co-operate with the Engineer-in-Charge in making and considering proposals for avoiding or reducing such an event or circumstance and in carrying out any resulting instruction of the Engineer-in-Charge.

46. TESTING, INSPECTION AND QUALITY ASSURANCE CONTROL PROGRAMME.

- i) To ensure that the services under the scope of this Contract are in accordance with the specifications, the Contractor shall adopt suitable Quality Assurance Programme to control such activities at all necessary points. The Contractor shall prepare and finalise such Quality Assurance Plan/Programme (QAP), which shall be approved by the Corporation after issue of LOI & before signing of Contract, which shall form an integral part of the Contract Agreement. The Corporation shall also carryout quality audit and quality surveillance of systems and procedures of Contractor's quality control activities. A Quality Assurance Programme of the Contractor shall generally cover the following:
 - a. Organisational structure for the management and implementation of the proposed Quality Assurance Programme.
 - b. Documentation control system.
 - c. The procedure set out for the purpose of materials and source inspection.
 - d. System for site controls including process controls.
 - e. Control of non-conforming items and systems for corrective actions.
 - f. Inspection and test procedure for site activities.
 - g. System for indication and appraisal of inspection status.
 - h. System for maintenance of records.
 - i. System for handling, storage and delivery.
 - j. A quality plan detailing out quality practices and procedures, relevant standards and acceptance levels for all types of work under the scope of this Contract.
- ii) All costs associated with routine testing of materials required as per technical specifications shall be included in his quoted rates in the Schedule of Items/ Bill of Quantities.
- iii) The Corporation reserves the right for any extra and/or additional quality tests to be carried out (over and above the test agreed in the approved quality plan) on Contractor's supplies and/or work in the Corporation's laboratory or any other laboratory of repute as decided by the Engineer-in-Charge. The Contractor shall associate himself and make all arrangements for sampling and supply of samples, as per the instructions of the Engineer-in-Charge. He may depute his quality engineer or a responsible person to witness the tests, however, the results of the tests shall be binding on him even if he chooses not to witness the tests. In case the results of tests fail to confirm compliance of materials / work to the requirements of specification, he shall replace/ rectify at his

expense such materials/ work as per instructions of the Engineer-in-Charge. The expenses towards such tests shall be borne by the Corporation. The cost of samples, sampling and witnessing the tests shall, however, be borne by the Contractor.

iv) **Identifying Defects**

The Engineer-in-Charge shall check the Contractor's work and notify the Contractor of any defects that are found. Such checking shall not, in any way, affect the Contractor's responsibilities. The Engineer-in-Charge may instruct the Contractor to search for a defect and to uncover and test any work that the Engineer-in-Charge considers may have a defect

v) **Tests:**

If the Engineer-in-Charge instructs the Contractor to carry out a test not specified in the Specification to check whether any work has a defect and the test shows that it does, the Contractor shall pay for the test and any samples. If there is no defect, the test shall be a Compensation Event.

vi) **Correction of defects:**

The Engineer-in-Charge shall give notice to the Contractor of any defects before the end of the Defects Liability Period, which shall begin on completion of the Work.

vii) **Time for Correction of Defects:**

Every time notice of a defect is given, the Contractor shall correct the notified Defect within the length of time specified by the Engineer-in-Charge's notice.

47. UNCORRECTED DEFECTS

(i) If the Contractor has not corrected a Defect within the time specified in the Engineer-in-Charge's notice, the Engineer-in-Charge will assess the cost of having the defect corrected, and the Contractor shall pay this amount to the Corporation.

(ii) If, for reasons of any accident, or failure or other event occurring to, in, or in connection with the Works, or any part thereof, either during the execution of the Works, or during the Defects Liability Period, any remedial or other work is, in the opinion of the Engineer-in-Charge, urgently necessary for the safety of the Works and the Contractor is unable or unwilling at once to do such work, the Corporation shall have the discretion to employ and pay other persons to carry out such work as the Engineer-in-Charge may consider necessary. If the work or repair so done by the Corporation is such that the same, in the opinion of the Engineer-in-Charge, is to be executed by the Contractor at his own cost under the Contract, then all costs consequent thereon or incidental thereto shall, after due consultation with the Contractor, be determined by the Engineer-in-Charge and shall be recoverable from the Contractor by the Corporation, and may be deducted by the Engineer-in-Charge from any amount due or becoming due to the Contractor and the Engineer-in-Charge shall notify the Contractor accordingly. Provided that the Engineer-in-Charge shall, as soon after the occurrence of any such emergency as may be reasonably practicable, notify the Contractor thereof.

48. MATERIALS

(i) The Contractor, at his own expense, shall arrange and supply all materials if not otherwise specifically mentioned, bought out items and consumable items required for the Contract. As per the Technical Specifications, the Contractor shall furnish from time to time test certificates, and samples and materials at his own cost to the Engineer-in-Charge for his approval before use in the work. The Contractor is encouraged, to the extent practicable and reasonable, to use materials, Contractor's equipment, plant, and supplies from sources within India.

- (ii) The Engineer-in-Charge shall also have powers to have such tests, in addition to those specified in the Contract, as may be required and the Contractor shall provide all facilities, to carry out the same. The cost of materials consumed in such tests and also expenses incurred thereon shall be borne by the Contractor in all cases, except where such tests which are in addition to those provided in the contract disclose that the materials are in conformity with provisions of the contract.
- (iii) The Engineer-in-Charge or his representative shall be entitled at any time to inspect and examine any materials intended to be used in or on the works, either on the site or at factory or workshop or other place(s) where such materials are assembled, fabricated, manufactured or at any place where these are lying or from where these are being obtained. For this purpose, the Contractor shall afford such facilities as may be required for such inspection or examination. The Contractor shall agree with the Engineer-in-Charge on the time and place for the inspection or testing of any materials or Plant as provided in the Contract. The Engineer-in-Charge shall give the Contractor not less than 24(twenty four) hours notice of his intention to carry out the inspection or to attend the tests. If the Engineer-in-Charge or his duly authorised representative does not attend on the date agreed, the Contractor may, unless otherwise instructed by the Engineer-in-Charge, proceed with the tests, which shall be deemed to have been made in the presence of the Engineer-in-Charge. The Contractor shall forthwith forward to the Engineer-in-Charge duly certified copies of the test readings. If the Engineer-in-Charge has not attended the tests, he shall accept the said readings as accurate. If, at the time and place agreed in accordance with this Sub-Clause, the materials or Plant are not ready for inspection or testing or if, as a result of the inspection or testing referred to in this Clause, the Engineer-in-Charge determines that the materials or Plant are defective or otherwise not in accordance with the Contract, he may reject the materials or Plant and shall notify the Contractor thereof immediately. The notice shall state the Engineer-in-Charge's objections with reasons. The Contractor shall then promptly make good the defect or ensure that rejected materials or Plant comply with the Contract. If the Engineer-in-Charge so requests, the tests of rejected materials or Plant shall be made or repeated under the same terms and conditions. All costs incurred by the Corporation by the repetition of the tests shall, after due consultation with the Contractor, be determined by the Engineer-in-Charge and shall be recoverable from the Contractor by the Corporation and may be deducted from any monies due or to become due to the Contractor and the Engineer-in-Charge shall notify the Contractor accordingly.
- (iv) The Engineer-in-Charge shall have full powers for removal of any or all such materials brought to site by the Contractor that are not in accordance with the specifications, or samples approved by him. Should the Contractor fail to remove the rejected materials, the Engineer-in-Charge shall be at liberty to have them removed by other means at the Contractor's cost. The Engineer-in-Charge shall have full powers to procure other proper materials to be substituted at Contractor's cost.
- (v) The supply of materials as per the approved/finalised plans, programme /requirement shall have to be regulated by the Contractor depending its priority with respect to various item of works of the Project, as may be fixed by the Engineer-in-Charge.
- (vi) Any loss or damage to the materials during handling, transporting, storage and construction till such time the works are taken over by the Engineer-in-Charge, shall be to the account of the Contractor. The Contractor shall be responsible for preferring of all claims and making good of the damage or loss by way of repairs and/or replacement of the portion of works damaged or lost free of cost including custom duty. The transfer of title shall not in any way relieve the Contractor of the above responsibilities during the period of the Contract.

- (vii) All costs, such as loading, transportation, unloading, storage etc. whatsoever as may be required:
- from the place/supply to the ultimate use for/in the works and/or
 - in connection with the removal of materials by the Contractor on completion of the works, shall be borne by the Contractor.
- (viii) Explosives required for the work will be issued to the Contractor from the Corporation's magazine only. The distance of all work sites/fronts from the Magazine shall be specified. The Contractor, at his own cost, shall take the responsibility to collect and transport explosives from the Corporation's magazine and to own portable magazine(s) to store explosive materials for their day to day consumption. The Contractor shall also own requisite number of explosive vans to carry explosive materials to their various working fronts. Sufficient number of licensed professional blasters shall be deployed by the Contractor for safe handling of explosives from the time of receipt till the consumption in totality. The Contractor shall comply with all relevant provision of law, such as Indian Explosive Act 1940 with amendments thereto.
- (ix) In case of departmental materials issued by the Corporation, materials rendered surplus on completion of the work or on foreclosure of work or cancellation of the Contract shall be returned by the Contractor in good condition at the Corporation's store at (name of Project). Surplus store and /or materials returned by the Contractor will be credited to him at the issue price (Appendix-VI). In case, used materials rendered surplus after the work are to be accepted, the decision of the Engineer-in-Charge in this respect shall be final and binding on the Contractor. On completion of works/foreclosure/cancellation, the Contractor shall return forthwith all materials to the Corporation lying on his possession/custody, failing which the Engineer-in-Charge shall be at liberty to effect recovery at double the issue price against that materials.

49. MATERIALS OBTAINED FROM EXCAVATION AND TREASURE TROVE, FOSSILS ETC

- The Contractor shall treat all materials obtained during dismantling of a structure, excavation of the site for a work etc. as the Corporation's property. The excavated spoils will have to be disposed off in a place as specified or as directed by the Engineer-in-Charge.
- In case the materials or parts thereof are used by the Contractor for Works, provided the same is found suitable and is approved by the Engineer-in-Charge, they shall have to pay for the same at the rate fixed by the Engineer-in-Charge from time to time.
- Fossils, coins, articles of value, structures and other remains or things of geological or archaeological interest discovered from the site shall be the absolute property of the Corporation. The Contractor shall take reasonable precautions to prevent his labour or any other person from removing or damaging any such article or things and shall, immediately upon the discovery thereof and before removal, acquaint the Engineer-in-Charge with such discovery and carry out the Engineer-in-Charge's directions as to the disposal of the same at the expenses of the Corporation.

50. POWER SUPPLY

The Contractor shall make his own arrangement for supply of power to meet the requirement for execution of the work at his own cost. The Contractor shall install, operate and maintain electrical distribution systems for power distribution through out his working site and temporary facilities. In case the Corporation is in a position to make these facilities available, the power shall be supplied at 11 kV (+ 6% to -9%), at convenient points to be

decided by the Engineer-in-Charge. The rate of per unit of such electricity consumption shall be applicable as fixed by the Corporation. Non-availability of power shall not entitle the Contractor to make any claim, whatsoever, for time extension or extra payment. The power supply shall be disconnected on completion of the Work and vacation of the site, as early as possible.

51. MEASUREMENTS

- (i) The Engineer-in-Charge shall, except as otherwise stated, ascertain and determine by measurement the value of work done, in accordance with the provisions of the Contract.
- (ii) Notwithstanding any provision in the relevant standard method of measurement or any general or local custom, measurement of work done under the Contract shall be taken in accordance with the procedure set forth in the technical specifications or schedule of quantities under the Contract. In case of items of work that are not covered by the Technical Specifications or Bill of Quantities, measurement shall be taken in accordance with the relevant standard methods of measurement laid down by the Bureau of Indian Standard.
- (iii) Items of the Works described in the Bill of Quantities for which no rate or price has been entered in the Contract, shall be considered as included in other rates and prices in the Contract and will not be paid for separately by the Corporation.
- (iv) All items having financial value shall be entered in measurement book, level book, etc. prescribed by the Corporation so that complete record is maintained of all work performed under the Contract.
- (v) Measurement shall be taken jointly by the Engineer-in-Charge or his authorised representative and by the Contractor or his authorised representative.
- (vi) Before taking measurements of any works, the Engineer-in-Charge or his representative deputed by him for the purpose shall give a reasonable notice to the Contractor. If the Contractor fails to attend or send an authorised representative for measurement after such notice or fails to countersign or to record the objection within 1 (one) week or from the date of taking measurements, then, in that event, the measurements taken by the Engineer-in-Charge shall be taken as correct and final measurements of such works.
- (vii) Measurement shall be signed and dated by both parties each day on the site on completion of measurement. If the Contractor objects to any of the measurements recorded by the representative of the Engineer-in-Charge, a note to that effect shall be made in the measurement book against the item objected to and such measurement shall be signed and dated by both the parties engaged in taking the measurement. The decision or interpretation of the Engineer-in-Charge shall be final and binding on the Contractor in respect of all Contract items, substituted items, extra and deviations.

52. PAYMENT ON ACCOUNT

- (i) Payment to the Contractor for the performance of the works under the Contract shall be made by the Corporation as per the guidelines and conditions specified herein. All payments made during the Contract shall be on account payments only. The final payment shall be made on completion of all the Works and on fulfilment by the Contractor of all his liabilities under the Contract.
- (ii) Interim bills shall be submitted by the Contractor monthly or before the date fixed by the Engineer-in-Charge for the work executed. The Engineer-in-Charge shall arrange to have the bills verified with reference to the measurement, recorded in the measurement book(s). All payments made to the Contractor during the currency of the Contract, including escalation, extra items for the works under execution, shall be treated as interim bills

- (iii) Payment for amount admissible shall be made on the Engineer-in-Charge certifying the sum to which the Contractor is considered entitled by way of interim payment for the work executed after deducting therefrom the amounts already paid, the Security Deposit and such other amounts as may be withheld/deductible or recoverable in terms of the Contract.
- (iv) Subject to above, measurement for payment will be made applicable as mentioned in Technical Specification.
- (v) Payment against the Contractor's bills shall be made by the Corporation as per the guideline given below, subject to deduction of Security Deposit, Mobilization and P&E Advance, interest thereon, Secured Advance, Income tax at Source or any other statutory deduction, if any.
 - a. Where the Contractor's Running Bill or part thereof is based on estimated quantities of the work performed, then 75% (seventy five percent) of the estimated value of the work shall be released against the Running Bill (Un-measured) within 10 (ten) days from the date of submission of such bill, subject to acceptance of the same by the Engineer-in-Charge. As regards estimation, the decision of the Engineer-in-Charge shall be final and binding to the Contractor. Full payment for such work will be released when the measurements for the work are accepted by the Engineer-in-Charge.
 - b. Payment for the Contractor's running Bills (measured) shall be released within 30 (thirty) days from the date of receipt of technically clear invoice/bill by the Engineer-in-Charge.
 - c. Taxes as applicable as per the Central & State Govt. directive shall be deducted at source from the bill of the contractor by the Owner. Claim for exemption if any, shall be supported by necessary exemption certificates by the contractor well before time.
 - d. All bank charges shall be to the Contractor's account.
 - e. **Deduction from Contract Price:**

Costs, charges, damages or expenses of any nature for which the contractor is liable to the Owner under the Contract shall be deducted by the Owner from payments of the Contract Price or any amount due on any other account to the contractor from the Owner and/or shall be deducted by the Engineer in-Charge from any securities/guarantees furnished by the contractor under the Contract. Such deduction shall constitute a valid discharge of the obligation of the Contractor to make the payment to the Owner.
 - f. **Paying Authority:** All payments shall be made by the Head of Finance of respective Project / Plant / Office of NEEPCO Ltd., who shall release the payment based on certification by the Engineer-in-Charge.
- (vi) All payments due to the Contractor shall be disbursed under e-payment system. The Engineer-in-Charge or his authorised representatives will verify and certify the Contractor's bills, indicating payment instructions (full bank details) for disbursement.

or

Payment through Escrow Account (Adoption/ applicability of this mode of payment shall be decided by the Tendering/ procuring authority while framing the Bid document for major contracts concerning works in Hydro Power Projects): All payments due to the Contractor shall be made under e-payment system. Payment shall be made only through escrow mechanism, as given below:

- (a) Owner intends that funds released for the project as advance or against work done is utilized for the project itself and Contractor & their sub-contractors/sub-vendors are not able to divert project funds to their other business. The Contractor shall provide a detailed month-wise cash flow estimate at the beginning of each financial year duly revised at quarterly intervals if required so by the Engineer. The submission to and consent by the Engineer of such programmes or the provision of such general descriptions or cash flow estimates shall not relieve the Contractor of any of his duties or responsibilities under the Contract. All payments to be made by the Owner to the Contractor (advance, Interim Payment and Final Bill) shall be released and credited into a designated Escrow Account. The designated Escrow Account shall be opened by the Contractor after Notification of Award with an Indian Nationalized Bank/Scheduled Commercial Bank. Particulars of the Escrow Account shall be submitted by the Contractor with the Owner before submitting request for mobilization advance. The designated Escrow Account shall be operated by Contractor and Bank shall release payment from the Escrow Account as per the statement jointly authorized by Engineer/ Engineer-In-Charge and the Contractor. Escrow Mechanism shall also apply to the subcontractors/ sub-vendors for works or any part thereof involving payment in Indian Rupees having substantial value of works say 10% of the Contract Price or Rs. 25.0 crore whichever is less.

Owner will release payments in the Escrow Account only. The Escrow Bank shall be entitled to receive its fee and expenses in an amount, and at such times, as may be agreed between the Escrow Bank and the Contractor. For the avoidance of doubt, such fee and expenses relating to opening and operation of said account shall be borne by the Contractor.

During the currency of the contract, Contractor or sub-contractors or sub-vendors or all of them may become subject to any scheme of Corporate Debt Restructuring or any other scheme of debt restructuring (DR Scheme). Since the Escrow Account involves an independent tripartite agreement between the Bank, Owner and the Contractor (Format Attached at **Annexure-II herein**), the Escrow Account/Agreement shall have an overriding effect over the terms & conditions of the DR Scheme. The Escrow Account/Agreement shall not be affected by the terms and conditions of the DR Scheme and the Contractor shall be required to disclose this condition to the DR Authority while submitting the case under DR.

- (vii) Any payment in respect of work done or goods, materials, plant or services supplied by any nominated Sub-Contractor, the Engineer-in-Charge shall be entitled to demand from the Contractor for reasonable proof that all payment, less retentions, included in previous certificates in respect of the work or goods, materials plants or services of such nominated sub-contractor have been paid or discharged by the Contractor. If the Contractor fails to supply such proof then, unless the Contractor
- Satisfies the Engineer-in-Charge in writing that he has reasonable cause for withholding or refusing to made such payments, and
 - Produces to the Engineer-in-Charge reasonable proof that he has so informed such nominated Sub-Contractors in writing,
the Engineer-in-Charge shall be entitled to pay such nominated Sub-Contractor all payments (less retention as may be provided in the nominated Sub-Contract), which the Contractor failed to make to such nominated Sub-Contractor and to deduct by way of set-off the amount so paid by the Engineer-in-Charge from any sums due or to become due from the Corporation to the Contractor.

- (viii) Any interim certificate given relating to work done or materials delivered, may be modified or corrected by any subsequent interim certificate or by the final certificate. No certificate(s) of the Engineer-in-Charge supporting an interim payment shall itself be conclusive evidence that any work or materials to which it relates is/are in accordance with the Contract.
- (ix) Should there be a request for extension of date of completion, pending its consideration; interim payments shall continue to be made as provided herein.
- (x) **Withholding payments:-** The Corporation may withhold the whole or part of any payment for the work claimed by the Contractor which, in the option of the Engineer-in-Charge, is necessary to protect himself from loss on account of:
 - a. Defective work not remedied or guarantees not met;
 - b. Failure by the Contractor to make due payments for materials or labour employed by him;
 - c. Claims filed against the Contractor;
 - d. Loss to another Contractor directly employed by the Corporation;
 - e. Insufficient progress;
 - f. Damage or loss of property or equipment of the Corporation;
 - g. Non-return of materials/equipment supplied by the Corporation when the same is due; and
 - h. Legal case instituted by the local authority/Government for default of the Contractor.

When the grounds for withholding payments are removed, payments of the amount due to the Contractor shall be made by the Corporation without delay.

53. PAYMENT OF FINAL BILL

- (i) Not later than 84 (eighty four) days after the issue of the Completion Certificate in respect of the whole of the Works, the Contractor shall submit to the Engineer-in-Charge a Statement of Completion with supporting documents showing in detail for consideration of the draft final bill, in the form approved by the Engineer-in-Charge:
 - a. the final value of all work done in accordance with the Contract up to the date stated in such Completion Certificate;
 - b. any further sums which the Contractor considers to be due; and
 - c. an estimate of amounts which the Contractor considers will become due to him under the Contract.

Estimated amounts shall be shown separately in such Statement on Completion of the work. The Engineer-in-Charge shall certify payment in accordance with Clause 52 of this Part.

- (ii) Final measurement shall be made on completion of work only when the Engineer-in-Charge, has given a certificate of completion of work as stated above. Payment will be made to the Contractor on the basis of final measurement so taken, adjustment of all outstanding recoveries on account of advance payments, if any, made to the Contractor and other recoveries of amounts due from the Contractor. Credit shall also be given to the Corporation for all intermediate payments to the Contractor made in accordance with Clause No. 52 of this Part.
- (iii) Not later than 56 (fifty six) days after the issue of the Defects Liability Certificate pursuant to Sub-Clause 65(iii) of this Part, the Contractor shall submit to the Engineer-in-Charge

for consideration a draft final bill with supporting documents showing in detail, in the form approved by the Engineer-in-Charge:

- a. the value of all work done in accordance with the Contract; and
 - b. any further sums which the Contractor considers to be due to him under the Contract or otherwise.
- (iv) If the Engineer-in-Charge disagrees with or cannot verify any part of the draft final bill, the Contractor shall submit such further information as the Engineer-in-Charge may reasonably require and shall make such changes in the draft as may be agreed between them. The Contractor shall then prepare and submit to the Engineer-in-Charge the final bill as agreed (for the purposes of these Conditions referred to as the "Final Bill").
- (v) If, following discussions between the Engineer-in-Charge and the Contractor and any changes to the draft final bill which may be agreed between them, it becomes evident that a dispute exists, the Engineer-in-Charge shall certify for payment those parts of the draft final bill, if any, which are not in dispute. The dispute shall then be settled in accordance with Clause 70. The final bill shall, then, be agreed upon on settlement of the dispute.
- (vi) Upon submission of the final bill, the Contractor shall give to the Corporation, with a copy to the Engineer-in-Charge, a written discharge confirming that the total of the final bill represents full and final settlement of all amount due to the Contractor arising out of or in respect of the Contract. Provided that such discharge shall become effective only after payment due under the agreed final bill issued pursuant to Sub-Clause 53 (iv) has been made and the performance security referred to in Clause 3 has been returned to the Contractor.
- (vii) Within 28 (twenty eight) days after receipt of the final bill, and the written discharge, the Engineer-in-Charge shall certify for payment the amount of the agreed final bill stating:
- a. the amount which, in the opinion of the Engineer-in-Charge, is finally due under the Contract or otherwise, and
 - b. after giving credit to the Corporation for all amounts previously paid by the Corporation and for all sums to which the Corporation is entitled, the balance, if any, due from the Corporation to the Contractor or from the Contractor to the Corporation as the case may be.
- (viii) The final Bill shall be paid after grant of extension of time, if any.

54. OVER PAYMENTS AND UNDER PAYMENTS

- (i) Whenever any claim, whatsoever, for the payment of a sum of money to the Corporation arises out or under the Contract against the Contractor, the same may be deducted by the Corporation from any sum then due or which, at any time thereafter, may become due to the Contractor under the Contract and, failing that, under any other Contract with the Corporation or from any other sum, whatsoever, due to the Contractor from the Corporation or from his Security Deposit, or he shall pay the claim, on demand within 15 (fifteen) days.
- (ii) The Corporation reserves the right to carry out post payment audit and technical examination of the final bill including all supporting vouchers, abstract, etc. The Corporation further reserves the right to enforce recovery of any over payment when detected, notwithstanding the fact that the amount of the final bill may be included by one of the parties as an item of dispute before an Arbitrator appointed under Clause 70 of this Part and notwithstanding the fact that the amount of the final bill figures in the arbitration award.

- (iii) If, as a result of such audit and technical examination any over payment is discovered in respect of any work done by him under the Contract, the same shall be recovered by the Corporation from the Contractor by any or all of the methods as prescribed above, and if under-payment is discovered the amount shall be duly paid to the Contractor by the Corporation.
- (iv) Any sum of money due and payable to the Contractor (including the Security Deposit returnable to him) under the Contract may be withheld or retained by way of lien by the Engineer-in-Charge or Corporation or such other person or persons in respect of payment of a sum of money arising, out of or under any other Contract made by the Contractor with the Engineer-in-Charge or Corporation or with such other person or persons.
- (v) If a sum of money is withheld or retained under this Clause by the Engineer-in-Charge or Corporation until his claim arising out of the Contract or any other Contract is either mutually settled or determined by the Arbitrator, if the Contract is governed by arbitration under Clause 70 of this Part or by the competent court hereinafter provided, as the case may be, the Contractor shall have no claim for interest or damages, whatsoever, on the account or any other ground in respect of any sum of money withheld or retained under this clause.

55. DELAYED PAYMENT

Omissions on the part of the Engineer-in Charge to pay the amount due upon measurement or otherwise shall neither vitiate nor make the Contract void. Further, no claim for interest or damages will be entertained or payable by the Employer upon:

- i) Any Bank Guarantee or
- ii) Payments in arrears or
- iii) Any balance which may become due on final settlement / re-conciliation of the account, or
- iv) Withheld by the Employer owing to any dispute or difference between the Parties.

Save as above, if the Contractor does not receive undisputed payment in accordance with Sub-clause 52 [Payment on account], the Contractor shall be entitled to receive simple interest as financing charges on the amount unpaid during the period of delay. This period shall be deemed to commence on the date for payment specified in Sub-Clause 52 [Payment on account], irrespective of the date on which any Interim Payment Certificate is issued.

These financing charges shall be calculated at the rate of 8% (eight percent) per annum until payment has been made in full.

The Contractor shall be entitled to this payment without formal notice or certification and without prejudice to any other right or remedy.

Further no interest will be paid on disputed claim / amount.

56. RIGHT TO CHANGE LOCATION AND PLANS

- i) The Corporation reserves the right to make reasonable changes in the Work and plan within the scope of work, which, in the opinion of the Engineer-in-Charge, may be considered necessary or desirable. The Contractor shall accommodate such reasonable changes, without any additional cost to the Corporation. The rates quoted by the Contractor in Bill of Quantities shall hold good in such cases. The Contractor's Plant,

equipment and their operational facilities shall be laid out in a manner to accommodate any such reasonable changes in the work, so as to avoid additional cost in shifting of Contractor's Plant and equipment.

- ii) Sub-clause 56(i) above shall apply to reasonable changes only. However, for other changes, the cost and payment thereof shall be regulated by Clause No. 33 of Part-III (CC) of Bid document.

57. CONTRACTOR'S RISK

- (i) The Contractor shall take upon himself the whole risk of executing the works and all materials obtained for the purpose of the Contract and all works executed shall be at his risk until a certificate of completion of the works has been issued by the Corporation.
- (ii) Unless otherwise provided in the contract, the Contractor shall, at his own cost, make good to the satisfaction of the Corporation all damages, loss or injury that may happen to any portion of the Works from whatsoever cause arising and shall deliver up the Works complete and undamaged.

58. ASSISTANCE IN MOVING SUPPLIES

- (i) The Corporation will assist in the prompt issue of priority for the movement on railway and ferries of all supplies machinery and materials brought by the Contractor for the purpose of carrying out the work from the point of entry or point of supply to site or sites at which the same are required.
- (ii) The tariffs of the carriage such as railway etc. shall be borne by the Contractor and no escalation will be allowed on tariff rate.
- (iii) The Corporation will use its best endeavour in assisting the Contractor, where required, in obtaining clearance through the Customs of Contractor's Equipment, materials and other things required for the Works.
- (iv) In respect of any Contractor's Equipment which the Contractor has imported for the purposes of the Works, the Corporation will use its best endeavour to assist the Contractor, where required, in procuring any necessary Government consent to the re-export of such Contractor's Equipment by the Contractor upon the removal thereof pursuant to the terms of the Contract.
- (v) The Contractor shall, where entering into any Sub-Contract for the execution of any part of the Works, incorporate in such Sub-Contract (by reference or otherwise) the provisions of this Clause in relation to Contractor's Equipment, Temporary Works or materials brought on to the Site by the Sub-Contractor.
- (vi) The operation of this Clause shall not be deemed to imply any approval by the Engineer-in-Charge of the materials or other matters referred to therein nor shall it prevent the rejection of any such materials at any time by the Engineer-in-Charge.

59. DATA IN SUPPORT OF RATES

- (i) Prior to or after formal acceptance of the bid, the bidders shall submit to the Engineer-in-Charge, if and when called upon to do so, the data in support of the rates quoted in the format set out in the data sheet provided for this purpose. It is presumed that the bidder shall quote rates for each item in Bill of Quantities on the basis of data worked out by him, in which case there should be no difficulty on the part of the bidder to submit details of data when called for. If the details of data are not furnished when called for, satisfactory reasons for not furnishing such data should be indicated, or otherwise it will be presumed that the rates quoted are policy rates and that these rates will not form the basis on which extra claims are worked out.

- (ii) For the purposes of statements submitted in accordance with Clause No. 59(i) of this Part, the bidder shall submit to the Engineer-in-Charge, a breakdown for each of the lump-sum items (if any) contained in the analysis of such rates. Such breakdowns shall be subject to the approval of the Engineer-in-Charge.

60. ADDITIONAL CLAUSE

Clause No. 23.2.2 of Part-II (ITB), Vol-1 of Bid Document shall prevail.

61. TAXES, DUTIES AND LEVIES ETC.

THE FOLLOWING PROVISION IS ONLY INDICATIVE. THE SAME SHOULD BE FINALISED ON CASE TO CASE BASIS IN CONSULTATION WITH THE CONCERNED FINANCE WING.

- (i) The rates quoted by the bidder shall be inclusive of all existing Indian and Non-Indian Taxes, Duties, Levies, Monopolies, Mahal Charges, Royalties, Octroi, Cess, etc. that may be leviable by Government or any other agency, existing 28 (twenty eight) days prior to the Latest date of submission of the bids. The Contractor shall be liable to pay all Indian and Non-Indian taxes, duties, cess, levies etc. assessed against him in pursuance of the contract and his personnel effects. The Contractor shall be solely responsible for the compliance of all the formalities as required under all the Taxation Laws in force.
- (ii) Any variation (increase/decrease) in the above mentioned taxes, duties, cess, levies etc. including introduction of new taxes, duties, cess, levies etc. that may arise after the Base Date (i.e. 28(twenty eight) days prior to the latest date of submission of bids) during the currency of the Contract shall be adjusted in the Contract Price on production of documentary evidence, which shall be regulated by the provisions given in Sub-clause 74.2 hereof.
- (iii) The rates quoted shall be inclusive of total liability (i.e. Contractor's as well as Corporation's) liability on Service Tax on the said Works Contract. In case there is any Service Tax liability on the part of the Corporation on reverse charge basis, the same shall be recovered from the bills of the contractor following the valuation method available to the Corporation under the relevant Rules to ascertain the value of service portion of works contract.
- (iv) Tax Deduction at Source/With-holding of Tax, as applicable under various Indian tax laws will be effected from the bills. The Corporation shall issue Tax Deduction Certificates on the said deductions as per the relevant tax law. Income Tax and surcharge thereof leviable as per the taxation laws of India on the Contractor's company or its personnel in respect of income arising in favour of either of the Company or its personnel under this Contract Agreement, shall be the absolute liability of the Contractor and not of the Owner.
- (v) If, for any reason, the Corporation is required to make payment directly to any Government or any other Authority, with respect to any taxes, duties, cess, fee or any other levy as referred to the above clauses, the contractor shall promptly reimburse to the Corporation, the amounts so paid, on making available to the Contractor the evidence of such payments made to such Government or the Authority concerned.
- (vi) Notwithstanding anything contained in Cl 61 (i) to 61 (v) above, Payments of Taxes, Duties, Levies, Monopolies, Mahal Charges, Royalties, Octroi, Cess, etc. on all the construction materials, plant, machineries and equipments required and brought to site for execution of the work shall be the liability and responsibility of the Contractor only. Any increase or decrease or imposition of new tax on the same shall be to the account of the

Contractor only. The Corporation shall not issue any declaration form under any law for such purpose.

62. CONTRACTOR'S LIABILITY- NOT RESTRICTED BY SCHEDULE OF SPECIFICATIONS:

- (i) The entire Work described briefly in these specifications is proposed to be paid under various items listed in the Bill/Schedule of Quantities. The works contemplated for each item of the Schedule/Bill of Quantities are described elsewhere in these specifications and the method of measurement and payment are also elaborated to some extent in these specifications.
- (ii) The Contractor shall carry out all works required for each item of Schedule/Bill of Quantities as per latest standard whether these works are detailed in these specifications or not. He shall furnish all labour, all materials, all plant and equipment required for completing the works of each item. The rates and prices entered into Bill/Schedule of Quantities shall cover the cost of all labour, all materials, all plant and equipment and other charges including incidentals and overheads required to execute all items irrespective of changes in the measured quantities for those items.

63. PROCEDURE FOR CLAIMS

- (i) Notwithstanding any other provision of the Contract, if the Contractor intends to claim any additional payment pursuant to any Clause of these Conditions or otherwise, he shall give notice of his intention to the Engineer-in-Charge within 15 (fifteen) days after the event giving rise to the claim has first arisen.
- (ii) Upon the happening of the event referred to in Sub-Clause 63 (i), the Contractor shall keep such contemporary records, as may reasonably be necessary to support any claim he may subsequently wish to make. Without necessarily admitting the Corporation's liability, the Engineer-in-Charge shall, on receipt of a notice under Sub-Clause 63 (i), inspect such contemporary records and may instruct the Contractor to keep any further contemporary records as are reasonable and may be material to the claim of which notice has been given. The Contractor shall get such contemporary records verified from the Engineer-in-charge and be entirely responsible to keep joint records of all such events / activities to substantiate the involvement of man-power / equipment etc.
- (iii) Within 15 (fifteen) days of giving notice under Sub-Clause 63(i), the Contractor shall furnish to the Engineer-in-Charge an account giving detailed particulars of the amount claimed alongwith joint records as per (ii) above and the grounds upon which the claim is based. Where the event giving rise to the claim has a continuing effect, such account shall be considered to be an interim account and the Contractor shall, at such intervals as the Engineer-in-Charge may reasonably require, send further interim accounts giving the accumulated amount of the claim and any further grounds upon which it is based. In cases where interim accounts are sent to the Engineer-in-Charge, the Contractor shall send a final account within 15 (fifteen) days of the end of the effects resulting from the event.
In any case, upon the happening of the event as referred in Sub-Clause 63 (i), claims should be raised by the contractor within 90 (ninety) days of such event. If contractor either fails to (i) notify the event or (ii) to file the claim within 90 days, the claim made by him shall not be entertained.
- (iv) The Contractor shall be entitled to have included in any interim payment, certified by the Engineer-in-Charge pursuant to Clause 52 of this Part, such amount in respect of any claim as the Engineer-in-Charge, after due consultation with the Contractor, may consider due to the Contractor, provided that the Contractor has supplied sufficient particulars to

enable the Engineer-in-Charge to determine the amount due. If such particulars are insufficient to substantiate the whole of the claim, the Contractor shall be entitled for payment in respect of such part of the claim as such particulars may substantiate to the satisfaction of the Engineer-in-Charge.

The Engineer-in-Charge shall notify the Contractor of any determination made under this Sub-Clause after receiving the claim with necessary /sufficient particulars from the Contractor for settlement of the claim. The claim should be settled within 45 days after receiving the claim alongwith all necessary/sufficient particulars by the Engineer-in-Charge otherwise the claim made by the Contractor will be deemed to have been accepted.

- (v) The Corporation shall not be liable to the Contractor for any matter or thing arising out of or in connection with the Contract or execution of the Works, unless the Contractor shall have included a claim in respect thereof in his final bill and (except in respect of matters or things arising after the issue of the Completion Certificate in respect of the whole of the Works) in the Statement at Completion referred to in Sub-Clause 53.

64. SAFETY SECURITY AND PROTECTION OF THE ENVIRONMENT

- (i) The Contractor shall, throughout the execution and completion of the Works and the remedying of any defects therein:
- have full regard for the safety of all persons entitled to be upon the Site and keep the Site (so far as the same is under his control) and the Works (so far as the same are not completed or occupied by the Corporation) in an orderly state appropriate to the avoidance of danger to such persons,
 - provide and maintain at his own cost all lights, guards, fencing, warning signs and watching, when and where necessary or required by the Engineer-in-Charge or by any duly constituted Authority, for the protection of the Works or for the safety and convenience of the public or others, and
 - 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 a consequence of his methods of operation.
- (ii) The Contractor shall, at his own expense, arrange for the general safety provisions indicated in **Appendix III** to these Conditions of Contract and also the particular requirements for Safety Precautions set out in the Technical Specifications or as required by the Engineer-in-Charge, in respect of all labour directly or indirectly employed for performance of the works and shall provide all facilities in connection therein. In case the Contractor fails to make arrangements as aforesaid, the Engineer-in-Charge shall be entitled to do so and recover the cost thereof from the Contractor.
- (iii) If, under Clause 8 of this Part, the Corporation shall carry out work on the Site with his own workmen he shall, in respect of such work:
- have full regard to the safety of all persons entitled to be upon the Site, and
 - keep the Site in an orderly state appropriate to the avoidance of danger to such persons.
- (iv) If, under Clause 8 of this Part, the Corporation shall employ other Contractors on the Site, he shall require them to have the same regard for safety and avoidance of danger.

65. DEFECTS LIABILITY PERIOD

- (i) In these Conditions the expression "Defects Liability Period" means 12 (twelve) months calculated from:

- a. the date of completion of the Works certified by the Engineer-in-Charge in accordance with Clause 38 of this Part, or
 - b. in the event of more than one certificate having been issued by the Engineer-in-Charge under Clause 40, the respective dates so certified shall be considered as date of completion of the corresponding works and defects liability period for such works shall reckon from the respective completion dates.
- (ii) The Contractor shall be responsible for fulfilling of all his obligations and making good as soon as practicable at his expenses any defect in or damage to any section or part of the Works which may appear or occur during the Defects Liability Period and which arises either from quality deficiency in design or materials or workmanship or from any act or omission, of the Contractor. Repair, modification or replacement of work or part thereof as required to make good such defect or deficiency or damage shall constitute complete fulfillment of the Contractor's obligations under the contract and upon such repair, modification, or replacement pursuant hereto or upon the expiration of the Defects Liability Period whichever is later, all such obligations shall terminate.
- (iii) Until the expiry of the Defects Liability Period, the Contractor shall have the right of access subject to the Employer's permission during normal working hours, at his own risk and expense, by himself or his duly authorized representatives, whose names shall have previously been communicated in writing to the Employer for the purpose of inspecting, working to undertake repairs/corrective actions and performance thereof. Subject to the Employers approval, which shall not be unreasonably withheld, the Contractor may at his own risk and expense make any test which it considers desirable.
- (iv) If effective steps for repair, modification or replacement of defects, deficiencies or damages pursuant hereto are not taken up within Two weeks of the date of notification thereof by the Employer to the Contractor or if such repair, modification or replacement is not completed with reasonable promptitude by the Contractor at its own expense, the Employer shall be entitled to undertake the same to be made good by other agencies or otherwise and deduct expenses from any sum that may by then or at any time thereafter becomes due to the Contractor under the Contract or from the amount released by encashing the bank guarantees provided by the Contractor under the Contract or recover otherwise from the Contractor including from money due to the Contractor on any other accounts whatsoever.
- (v) If during the defects Liability Period any portion of the Works is found defective or deficient in any manner and is repaired/rectified/replaced pursuant to the defects liability provisions of the Contract, the Defects Liability Period for such portion of the Works, shall, notwithstanding anything to the contrary contained herein, be operative for a further period of 12(twelve) months from the date of such repair/ rectification/ replacement.
- (vi) The Contract shall not be considered as completed until a Defects Liability Certificate shall have been signed by the Engineer-in-Charge and delivered to the Corporation, with a copy to the Contractor, stating the date on which the Contractor shall have completed his obligations to execute and complete the Works and remedy any defects therein to the Engineer-in-Charge's satisfaction. The Defects Liability Certificate shall be given by the Engineer-in-Charge within 28 (twenty eight) days after the expiry of the Defects Liability Period, or, if different defects liability periods shall become applicable to different Sections or parts of the Permanent Works, the expiry of the latest such period, or as soon thereafter as any works instructed, pursuant to Clauses 18 and 33, have been completed to the satisfaction of the Engineer-in-Charge.

Only the Defects Liability Certificate, referred to above shall be deemed to constitute

approval of the Works.

- (vii) Notwithstanding the issue of the Defects Liability Certificate, the Contractor and the Corporation shall remain liable for the fulfilment of any obligation incurred under the provisions of the Contract prior to the issue of the Defects Liability Certificate which remains unperformed at the time such Defects Liability Certificate is issued and, for the purposes of determining the nature and extent of any such obligation, the Contract shall be deemed to remain in force between the parties to the Contract.

66. TRAINING AND APPRENTICES

The Contractor shall, during the currency of the Contract, engage and also ensure engagement by his Sub-Contractor and other employed by the Contractor in connection with the works, such number of apprentices and in such categories for such period, as may be required under the Apprenticeship Act, 1961, and he shall be responsible for all obligations of the Corporation under the aforesaid Act, including the liability to make payment to apprentices as required under the Act.

67. CONTRACT MATTERS TO BE TREATED AS CONFIDENTIAL

- (i) All documents, correspondence, decisions and orders concerning the Contract shall be considered as confidential and/or restricted in nature by the Contractor and he shall not divulge or allow access to them by any unauthorised person.
- (ii) The Contractor shall take necessary steps to ensure that all persons employed on any work in connection with the Contract have noted that the Indian Official Secrets Act, 1923 (XIX of 1923) applies to them and shall continue so to apply even after the execution of such works under the Contract.

68. LAWS GOVERNING THE CONTRACT

- (i) Unless otherwise hereinafter provided, the Contract shall be governed by the Indian Laws for the time being in force. The Court stipulated at the place where the Head Quarters of the Corporation is situated, viz. Shillong, in the state of Meghalaya in India will have jurisdiction to entertain Civil Suits pertaining to the Contract.

69. FINALITY CLAUSE

It shall be accepted as an inseparable part of the Contract that, in matters regarding materials, workmanship, removal of improper work, interpretation of the Contract drawings, specifications and any other contract documents, mode of procedure and the carrying out of the work as stipulated under relevant Clauses, the decision of the Engineer-in-Charge, which shall be given in writing, shall be final and binding on the Contractor.

70. SETTLEMENT OF DISPUTES AND CONCILIATION/ ARBITRATION

- 70.1 **Appointment of Independent Engineer (IE) for dispute avoidance: (This provision is for contracts concerning works having potential risks of disputes, for example works involving uncertainties like underground activities, for major contracts concerning works in Hydro Power Projects. However, for works other than the said works, wherever necessity of dispute avoidance through "Independent Engineer (IE)" arises, such matter may be referred to "Independent Engineer (IE)" with mutual consent of owner and the contractor.)**
- (i) Within 6 (six) months of the Commencement Date, the Parties shall jointly appoint an Independent Engineer, (hereinafter referred to as "IE") from the list of Experts circulated

by the MOP vide its O.M. No. 15-18/1/2020-HYDEL-II (MoP)-Part(1) Dtd. 29-11-2021 as available on website of Ministry of Power, Government of India (MoP). The 'IE' shall function as per terms and conditions included in the MoP's O.M. No. 15-18/1/2020-HYDEL-II (MoP) Dated 27-09-2021. The Contractor and the Corporation shall equally bear cost & expenses of the IE.

If a dispute of any kind, whatsoever, arises between the Parties in connection with or arising out of the Contract or the execution of the works under the said Contract, whether during the execution of the work or after completion thereof and whether before or after repudiation or otherwise termination of the Contract, including any dispute as to any opinion, instruction, determination, certificate or valuation of the Engineer, either Party may refer the dispute within 15(fifteen) days from the date when such dispute or difference of opinion arises in writing to the IE with copy to the other party in line with provisions of MoP's O.M. No. 15-18/1/2020-HYDEL-II (MoP) Dated 27-09-2021. Such reference shall state that it is given pursuant to this sub-clause.

(ii) **Obtaining Independent Engineer's (IE's) Decision:**

The IE shall prescribe a resolution timeline depending upon the nature and number of disagreements subject to a maximum duration of thirty (30) days of reference of dispute to it by the Party(ies) or within extended timeline under extraordinary circumstances and for reasons to be recorded in writing.

Both Parties shall promptly make available to the IE all required information, further access to the Site, and the appropriate facilities as the IE may require for the purposes of arriving at a decision on such dispute.

Unless the Contract has already been abandoned, repudiated or terminated, the Contractor, in every case, shall continue to proceed with the Works with all due diligence in accordance with the Contract.

If the IE has given its decision and both the parties agree and sign the decision, the decision shall become final and binding upon both parties. Thereafter, such issues shall not be subjected to either Conciliation or Arbitration.

If either Party is dissatisfied with the IE's decision, then either Party may, within 15 (fifteen) days of receiving the decision of IE, give notice to the other Party of its dissatisfaction. The party which is dissatisfied with the decision, may, without prejudice to any other rights it may have, refer the dispute to either conciliation under Sub-Clause 70.3 [Conciliation mechanism for dispute resolution] or arbitration under Sub-Clause 70.4 [Arbitration] within 28 (twenty eight) days of receiving the decision of the IE, failing which the decision of IE will be final and binding.

70.2 Amicable Settlement:

In case a dispute remains unresolved following the decision of the Independent Engineer (IE) i.e. where notice of dissatisfaction has been given under Sub-Clause 70.1 (ii) above, both Parties shall attempt to settle the dispute amicably before the parties can take recourse to either Conciliation or Arbitration, as hereinafter provided. However, unless both Parties agree otherwise, Conciliation or Arbitration proceedings may be commenced on or after 30(thirty) days of the notice of dissatisfaction even if the dispute remains unresolved through amicable settlement.

70.3 Conciliation mechanism for dispute resolution: (Applicability of this provision shall be guided by Corporate Policy of the Corporation as resolved in 273rd NEEPCO's BOD meeting dtd. 19-09-2022. Accordingly, this provision shall be applicable for the

amount involved in the dispute / claim amount of more than or equal to Rs. 5 Crore, below which it would not go into the exercise of conciliation, based on Para 4.3 of SOP of MOP's O.M. No. 11/22/ 2021-Th.II dated 29-12-2021)

If amicable settlement has not been reached within the period stated-in Sub-Clause 70.2 above, then the Parties may either resort to Conciliation Mechanism for resolution of dispute through Conciliation Committee of Independent Experts (CCIE) constituted by the Ministry Power, Government of India (MoP) or take recourse to Arbitration.

The dispute resolution by Conciliation process through Conciliation Committee of Independent Experts (CCIE) shall be proceeded as per the procedure, terms and conditions as included in the MOP's O.M. No. 11/22/ 2021-Th.II dated 29-12-2021. The Parties shall equally bear all expenditure incurred on the conciliation proceedings including payment of fees to the Conciliators, office space, logistic, secretarial assistance and other incidental expenses etc., as per said O.M. No. 11/22/ 2021-Th.II dated 29-12-2021 of MoP. The Conciliation process shall be conducted under Part III of the Arbitration and Conciliation Act, 1996. The Conciliation Committee would either be able to resolve and settle and dispute(s) between the Parties, or the process may fail. In case of failure of the conciliation process at the level of the Conciliation Committee, the parties may withdraw from conciliation process and take recourse to the laid down legal process of Courts. However, the option of Arbitration would not be available once the conciliation mechanism has been exercised. In the event of the conciliation proceedings being successful, the parties to the dispute would sign the written settlement agreement and the conciliators would authenticate the same. Such settlement agreement would then be binding on the parties in terms of Section 73 of the Arbitration and Conciliation Act, 1996.

After successful conclusion of proceedings, the Parties to the conciliation process, have to undertake and complete all necessary actions for implementation of the terms of settlement within a period of 30 days from execution of settlement agreement, unless a different timeline not exceeding 60 days is agreed upon in settlement agreement. All pending claims of parties, in connection with the dispute, before any other legal forum are to be withdrawn within the said 30 days in pursuance of the settlement agreement.

70.4 ARBITRATION

If amicable settlement has not been reached within the period stated in Sub-Clause 70.2 above and the Contractor opts for Arbitration instead of Conciliation, then the dispute shall be finally settled through Arbitration as below:

- (i) A dispute or difference whatsoever arising between the parties and of or relating to the construction, interpretation, application, meaning, scope, operation or effect of this Contract or the validity or the breach thereof, shall be settled by Arbitration in accordance with the Arbitration and Conciliation Act, 1996 (Act No. 26 of 1996) with its subsequent amendments and the Rules of Arbitration of the Institution (*viz. SFCA, CIAC, DIAC, ICA, SAROD, IIAM, IDRC, ICADR etc., from which, only one Arbitration Institute shall be selected and specified accordingly by the Employer*).
- (ii) The expenses of the arbitration, as determined by the Arbitral Tribunal, shall be shared equally by the Employer and the Contractor as per terms of Institution. However, the expenses incurred by each Party in connection with the preparation, presentation etc. of its case prior to during and after the arbitration proceedings shall be borne by each party itself.

- (iii) Provided always that no reference for arbitration shall be maintainable unless the Contractor deposits to the Employer a sum equal to 1.0 % (one percent) of the amount under dispute and the sum so deposited shall, on the termination of the arbitration proceedings be adjusted against the cost, if any, awarded by the arbitral tribunal against the Contractor and the balance remaining after such adjustment or in the absence of any such cost being awarded, the whole of the sum will be refunded to him within one month from the date of the arbitral award. No interest shall be paid by the Employer on the amount deposited by the Contractor for referring the claim to arbitration.
- (iv) The reference to arbitration may proceed notwithstanding that the Works shall not then be or be alleged to be complete, provided always that the obligations of the Employer and the Contractor shall not be altered by reason of the Arbitration being conducted during the progress of the works. The Contractor will ensure that the work under the Contract shall continue during arbitration proceedings and no payment due from or payment by the Employer shall be withheld on account of such proceedings except to the extent that may be in dispute.
- (v) The language of the arbitration proceedings and that of all documents and communications between the Parties shall be English.
- (vi) In the event of dispute or differences arising between the Employer and a Government Department/Organisation or in between the Employer and another Central Public Sector Enterprise (CPSE), settlement of disputes through the Administrative Mechanism for Resolution of CPSEs Disputes (AMRCD) shall be done as under:
"In the event of any dispute or difference relating to the interpretation and application of the provisions of commercial contract(s) between Central Public Sector Enterprises (CPSEs)/Port Trusts inter se and also between CPSEs and Government Departments/ Organisations (excluding disputes concerning Railways, Income Tax, Customs & Excise Departments), such dispute or difference shall be taken up by either party for resolution through AMRCD as mentioned in DPE OM No. 4(1)/2013-DPE(GM)/FTS-1835 dated 22-05-2018".
- (vii) The Arbitrator appointed shall have no power to award interest on any claim referred to the Arbitration. No claims for interest or damages on whatsoever count will be entertained by the Corporation with respect to any dispute, difference or misunderstanding between the Corporation and the Contractor.
- (viii) Issues/Disputes arising out of the same cause of action cannot in any case be referred to Arbitration more than once subject to agreement by the Parties.

71. ADVANCES AND RECOVERY THEREOF

Financial assistance, in the shape of recoverable advance, as considered necessary, by the Engineer-in-Charge and on written request in this regard from the Contractor, may be provided to the Contractor for augmenting / supplementing his resources in the manner indicated hereunder. Such assistance shall not be made a precondition by the Contractor for execution of the works.

(i) Advances for Initial Mobilisation, Preliminary, Enabling Ancillary Works

Provision of mobilization advance should essentially be need-based. Decision to provide such advance shall rest at the level of Board (with concurrence of Finance).

Mobilization Advance shall be limited to 5% (five percent) of Contract value, to be released in two installments of 2.5% (two point five percent) each. Utilization certificate from the contractor for the mobilization advance shall be obtained. The 2nd installment shall be released after getting satisfactory utilization certificate from the contractor for the 1st installment.

1st instalment of Mobilization Advance shall be released, subject to fulfilment of the following:

- (i) Signing of Contract Agreement
- (ii) Submission and acceptance of BG

The amount of mobilization advance; interest to be charged, if any; its recovery schedule and any other relevant detail should be explicitly stipulated in the tendered document upfront.

Relevant format for BG shall be provided in the tender document, which shall be enforced strictly and authenticity of such BGs shall also be verified from the issuing bank, confidentially and independently by the organization.

The recovery of mobilisation advance shall be made from all interim bills such as Running Account Bills, Escalation Bills and any other interim bill related to works. At any point of time, even if the Contractor's money on account of work done is not available with the Corporation or if the Contractor is not executing the work or executing it at a slow pace, recovery of Mobilisation Advance shall be made by encashing BG of required value submitted against Mobilisation Advance.

If the Contractor fails to mobilise machinery and labour or execute works within the stipulated mobilisation period, as per the approved Construction Programme, the Corporation reserves the right to encash the Bank Guarantees furnished against Mobilisation Advance.

Besides the reason giving rise to the encashment of BG, as stated above, if there is a delay in submission of bills by the contractor or any other reasons attributable to contractor, leading to delayed recoveries of advance, interest shall be charged on such delayed recoveries @ SBI MCLR 1 YR plus at least 5% prevailing on the schedule date of recovery.

Clause 71(i)(a): Interest bearing Mobilization advance:

Mobilization advance shall generally be interest bearing at the rate of SBI MCLR 1 YR plus at least 5% and recovery shall be linked with progress of work.

Mobilization advance shall be released to contractor against submission of BG of equivalent amount along with interest @ SBI MCLR 1 YR plus at least 5% or 110% of Mobilization Advance amount, whichever is higher. For the purpose of BG, interest @ SBI MCLR 1 YR plus at least 5% prevailing as on the date of LOI shall be adopted and interest will be calculated upto the period that the advance is fully adjusted.

Mobilization advance shall be recovered on pro-rata basis from the work bills of the Contractors along with interest @ SBI MCLR 1 YR plus at least 5%, duly starting the recovery when 10% of the work is executed and completing the recovery by the time 80% of the original Contract price is executed. The interest shall be calculated on balance of principal outstanding on the date of recovery.

Clause 71(i)(b): Interest free Mobilization advance:

If interest free mobilization advance is felt necessary in specific cases, it shall be placed before the BOD for approval. If interest free mobilization advance is decided, it shall be clearly stipulated in the tender document and its recovery should be time-based and not linked with progress of work. This would ensure that even if the contractor is not executing the work or executing it at a slow pace, the recovery of advance could commence and scope for misuse of such advance could be reduced.

Part 'Bank Guarantee' (BGs) against the mobilization advance should be taken in as many numbers as the proposed recovery installments and should be equivalent to the amount of each installment. This would ensure that at any point of time even if the contractor's money on account of work done is not available with the organization, recovery of such advance could be ensured by encashing the BG for the work supposed to be completed within a particular period of time.

The Mobilisation Advance shall be recovered monthly/quarterly instalments (as decided by tendering Authority) from the contractor as per the following stipulations.

- (i) **Commencement of recovery:** Recovery shall commence from the last day of the 2nd month subsequent to the month in which the Mobilisation advance is released.
- (ii) **Completion of recovery:** The advance along with accrued interest shall stand fully recovered on the last day of last but 2(two) month of schedule completion month.
- (iii) **Amount of monthly/quarterly recovery:** The Principal shall be recovered in equal monthly/quarterly instalments (As decided by tendering Authority).

(ii) Advance for "Plant and Equipment"/ "Construction Equipment"

Plant & Equipment Advance, up-to a maximum of 10% (ten percent) of the Contract Sum shall be payable to the Contractor. Such Advance shall be interest bearing @ SBI MCLR 1 YR plus at least 5% from the date of release of advance against submission of BG of equivalent amount along with interest @ SBI MCLR 1 YR plus at least 5% (**Marginal Cost of Funds based Lending Rate**), till such time the advance is recovered fully from the Contractor, duly starting the recovery when 10% (ten percent) of the Original Contract Price is executed and completing the recovery by the time 80% (eighty percent) of the Original Contract Price is executed. Upon submission by the Contractor of hypothecation deed of Plant and Machinery procured upto the value of advance granted by the Corporation, duly insured, the BG shall be released.

For the purpose of working out interest, SBI MCLR 1 YR plus at least 5% prevailing as on the date of LOI shall be adopted.

Advance against Plant & Equipment shall be released, subject to fulfilment of the following:

- (i) Signing of Contract Agreement
- (ii) Finalization of the list of new machinery to be procured/ mobilized by the Contractor and approval of the schedule of deployment of the same by the Corporation
- (iii) Submission of Invoice/Proforma Invoice for the new Construction Equipment

- (iv) Submission and acceptance of BG
- a. Subject to maximum limit fixed as above, such advance shall be granted to the extent of 90% (ninety percent) of the cost of new plant and equipment purchased and or proposed to be purchased by him duly supported by due proof of payment purchase vouchers , proforma invoice and any other documents as applicable. **No advance shall be admissible on equipment purchased under a hire purchase scheme/ financing arrangement or on hired equipment.**
 - b. Such plant and equipment must reach the site of work in good condition duly certified both by the Contractor and Engineer-in-Charge in respect of the utility, performance and dependability.
 - c. The BG so submitted shall be released by the Engineer-in-Charge on submission of the following by the Contractor:
 - (i) Documentary proof that the Contractor is the uncumbered Owner of the plant and equipment for which advance was drawn.
 - (ii) Deed of Hypothecation of the plant and equipment for which advance was drawn in favour of the Corporation.
 - (iii) Policy of Insurance of plant and equipment for which advance was drawn for full value against all risk at his cost. The insurance policy shall be valid till such time the plant and equipment remains under hypothecation and advance is recovered / repaid in full. The insurance coverage shall be extended as per the requirement of the contract and at the cost of the contractor.
 - d. The hypothecation deed as approved by the Corporation shall be executed on legally valid stamp paper of appropriate value. The hypothecation deed shall be registered by the Contractor with the Registrar of Companies/Registrar of Documents, as applicable under the Companies Act, and all charges on account of execution deed, registration charges etc. shall be borne the Contractor, and duly inform to the Engineer-in-Charge about such registration.
 - e. No advance will be payable after expiry of half the contracted period of completion or 12 (twelve) months, whichever is less, provided on a written request from the Contractor explaining the circumstances which are considered justified in the interest of work by the Engineer-in-Charge who may in his sole discretion extend the time limit for giving advance beyond the stipulated period as above.
 - f. The Contractor shall be responsible for maintaining the plant and equipment in good working condition. The Contractor shall also not remove from site of work the hypothecated plant and equipment without written permission of the Engineer-in-Charge. For the Equipment for which advance is paid, the Contractor may remove any such Equipment, from Site when no more required for the Works only after repaying the outstanding advance with prior written permission of the Engineer-in-Charge.
 - g. The cost of new plant and equipment for the purpose of this Clause means the cost as invoiced by the suppliers of the equipment, inclusive of taxes and duties. The transportation cost shall not be taken into account for this purpose. In respect of imported equipment, in addition to the basic cost, cost of insurance, freight cost, plus Custom Duty shall be deemed to be cost of equipment for the purpose of this clause.
 - h. The advance and the accrued outstanding interest thereof will be recovered on pro-rata basis i.e. at any time, the ratio of total principal recovered to total amount of

advance and the accrued outstanding interest shall not be less than the ratio of gross value of work done (including escalation, if any) to the Contract Sum. The recovery of advance shall be made from all interim bills, such as Running Account Bills, Escalation Bills and any other Interim Bill related to works.

- i. Provided always that, if at any stage the execution is delayed by the Contractor or he commits default and does not take remedial steps to proceed with the work in accordance with the Contract, no further advances shall be paid upto such time the Contractor makes good the delay to the satisfaction of the Engineer-in-Charge. In case the Contractor continues to commit default and does not take remedial steps in this regard to the satisfaction of the Engineer-in-Charge, despite written notice in this regard, the Engineer-in-Charge shall be entitled to take over the hypothecated plant and equipment and take such other measures under the Contract, as may be considered necessary, to recover the amount of advance to the Contractor. If the Contract is terminated in full or part or no work remain to be executed due to foreclosure and the Contractor does not repay in full the advance within a period specified by the Engineer-in-Charge, the Engineer-in-Charge shall take over hypothecated plant and equipment and take such other measures as may be considered necessary to realise the outstanding amount against the advance from the contractor.
- j. During execution of the work, if the estimated value of completion of work increases beyond 125% (on account of variation in BOQ, extra / substituted items of works) of the contract sum, then additional plant and equipment advance of 5% of the value of work increasing over the contract sum may be given at the written request of the Contractor under the same terms and conditions as elaborated above. Such additional advance shall be payable on value of executed work attaining 100% of the contract sum. The recovery of such advance shall commence in the month following the month the advance payment has been made and completing the recovery by the time 80% of the estimated increased value of work is executed or by the time allowed for completion of the increased value of work or by the actual date of completion, whichever is earlier.

(iii) SECURED ADVANCE (This clause shall be applicable to those Contracts where supply of materials (which are not combustible, fragile or perishable in nature) is within the scope of the Contractor)

Secured Advance of 75% (seventy five percent) of cost of cement and steel shall be granted after the materials are received at site, duly certified by the Engineer in Charge. The amounts of Secured Advance in any case, shall not exceed 50% (fifty percent) of the total cost of items where cement and steel are required to be used. The Secured Advance shall be granted for only those Contracts where supply of cement and steel is within the scope of the Contractor. No escalation on such component of cost will accrue from the date of release of advance till it is fully recovered. This shall be recovered on monthly basis from the work bill to the extent of utilisation of material. However, such advance will be recovered fully within a period of 6(six) months from the date of grant of advance or on utilization of the material whichever is earlier.

Secured Advance will be released, generally, subject to fulfilment of the following:

- (i) Submission of Invoice;
- (ii) On production of documentary evidence by the Contractor to the Engineer-In-charge about receipt of the materials at the site and cost thereof.

72. MONITORING OF MONTHLY PROGRESS

- (i) The Contractor shall submit a Programme of work (as per Data Sheet provided under Volume 5) showing the monthly Schedule of execution etc. for executing the work within the specified completion time. This monthly Schedule shall form a part of the Contract Agreement and shall be monitored closely.
- (ii) As time is the main essence of the Contract, progress will be monitored monthly and for any shortfall in the monthly quantity to be achieved, interim compensation for delay @1% (one percent) of the value of work falling short shall be deducted from the Running Account bills which shall be adjusted as and when the shortfall is made good in the subsequent month. This interim compensation for delay will be cumulative for all monthly shortfalls in the same sequence. This interim compensation for delay will be finally adjusted on completion of the whole of the Works or Sections of the Works for which separate times for completion are given in the Contract (in Appendix-I).

73. ACCESS TO OTHER CONTRACTORS

The Contractor shall give free access to other Contractors for doing their works and they will have to co-ordinate all their activities like excavation filling etc. with other Contractors. In all matters of conflict of interest, the Engineer-in-Charge shall direct what compromise should be made and his decision shall be final and binding on all the parties.

74. PRICE ADJUSTMENT / VARIATION**74.1 Price Variation Formulae**

- (i) Payment to Contractor for work done shall be adjusted for increase or decrease in the Local Currency cost of labour, materials and High Speed Diesel, except for those materials supplied by the Corporation, according to the procedure mentioned hereunder and total percentage components of these shall be 80% (eighty percent) only. The base indices for price adjustment against cement, steel, labour, materials (other than cement and steel) and High Speed Diesel shall be on the day 28 (twenty eight) days prior to the latest date for submission of bids, which shall be referred to as the Reference/ Base Date.
- (ii) The Price adjustment formula for the various components of the Contract Price shall be construed as stipulated hereinafter. The formula designed for governing and calculating the price adjustment to be applied to the Contract Price shall be as follows:

The Formula for Price Adjustment is given as below:

ALTERNATIVE-I

- A. **Category-I:** Structural Steel Supports- Steel Ribs and Steel Lagging and metal works (steel) including steel pipes, steel liner in pressure shaft & penstock (BOQ Item Nos. i.e. relevant items) (to be calculated for each currency separately)

$$V = R \left\{ s^* \times \frac{S_1 - S_0}{S_0} + l^* \times \frac{L_1 - L_0}{L_0} + a^* \times \frac{A_1 - A_0}{A_0} + b^* \times \frac{B_1 - B_0}{B_0} + e^* \times \frac{E_1 - E_0}{E_0} + d^* \times \frac{D_1 - D_0}{D_0} \right\}$$

Where

V = Adjusted Gross Value of work done month wise for items listed under Category-I.

R = Gross value of work done month-wise for items listed under Category-I.

's' = Coefficient of steel content in the cost of work = Say 0.53

'l' = Coefficient of labour (for all categories) content in the cost of work = Say 0.12

'a' = Coefficient of acetylene gas content in the cost of work = Say 0.03

'b' = Coefficient of oxygen gas content in the cost of work = Say 0.03

'd' = Coefficient of High Speed Diesel Oil content in the cost of work = Say 0.05

'e' = Coefficient of electrodes content in the cost of work = Say 0.04

(Coefficients are indicative only, and needs to be taken from the estimate)

'S' = Index for Steel

Index Numbers for wholesales price in India = by Groups & Sub Groups (Base 2004-05 = 100), published in RBI Bulletin, Table No. 21).

Group (J): Basic Metals, Alloys & Metal Products

Sub Group a: FERROUS METALS

'L' = Labour Index

Consumer Price Index Numbers for Industrial Workers – All India & Selected Centres (Base 2010 = 100) Published by labour Bureau, Simla / RBI Bulletin.

Table No. 18, Under the Head: "All India"

'A' = Index for Acetylene gas

Index Numbers for wholesales price in India = by Groups & Sub Groups (Base 2004-05 = 100) Published in RBI Bulletin, Table No. 21)

Group (H): Chemicals & Chemical Products

Sub-Group I: Matches, explosives and other chemicals n.e.c.

'B' = Index for Oxygen Gas

Index Numbers for wholesales price in India = by Groups & Sub Groups (Base 2004-05 = 100) Published in RBI Bulletin, Table No. 21)

(Group (H): Chemicals & Chemical Products

Sub-Group I: Matches, explosives and other chemicals n.e.c.

'D' = High Speed Diesel Oil

High Speed Diesel Oil price at outlet of Indian Oil Corporation nearest to the Project Site. (Selling price inclusive of taxes and duties per litre of H.S.D. Oil)

'E' = Index for Electrodes

Index Numbers for wholesales price in India = by Groups & Sub Groups (Base 2004-05 = 100) Published in RBI Bulletin, Table No. 21)

(Group (J): Basic Metals, Alloys & Metal Products

Sub-Group a: Basic Metals & Alloys

a4: Ferro Alloys

- B. **Category-II:** Reinforcement, rock bolt, **rock anchors** and wiremesh (B.O.Q. Item Nos..... i.e. relevant items) (to be calculated for each currency separately)

$$V = R \left\{ s^* \times \frac{S_1 - S_0}{S_0} + m^* \times \frac{M_1 - M_0}{M_0} + l^* \times \frac{L_1 - L_0}{L_0} + d^* \times \frac{D_1 - D_0}{D_0} \right\}$$

Where

V = Adjusted Gross Value of work done month-wise for items listed under Category-II.

R = Gross value of work done month-wise for items listed under Category-II.

's' = Coefficient of steel content in the cost of work = Say 0.55

'm' = Coefficient of materials (other than steel) content in the cost of work = Say, 0.02

'I' = Coefficient of labour (for all categories) content in the cost of works, = Say, 0.18

'd' = Coefficient of High Speed Diesel Oil content in the cost of work = Say, 0.05

(Coefficients are indicative only, and needs to be taken from the estimate)

'S' = Index for Steel

Index Numbers for wholesales price in India = by Groups & Sub Groups (Base 2004-05 = 100), published in RBI Bulletin, Table No. 21).

Group (J): Basic Metals, Alloys & Metal Products

Sub Group a: FERROUS METALS

a2. STEEL: LONG

'M' = Index for Material (Other than Steel)

Index Numbers for Wholesales Prices in India = by Groups & Sub Groups (Base 2004-05 = 100), published in RBI Bulletin, Table No. 21).

Under Head: All Commodities

'L' = Labour Index

Consumer Price Index Numbers for Industrial Workers – All India & Selected Centres (Base 2010 = 100) Published by labour Bureau, Simla / RBI Bulletin.

Table No. 18, Under the Head: "All India"

'D' = High Speed Diesel Oil

High Speed Diesel Oil price at outlet of Indian Oil Corporation nearest to the project site. (Selling price inclusive of taxes and duties per litre of H.S.D. Oil).

C. **Category-III:** Concrete, Shotcrete, Masonry and Cement Grouting etc. (B.O.Q. Item Nos..... i.e. relevant items) (to be calculated for each currency separately)

$$V = R \left\{ c^* \times \frac{C_1 - C_0}{C_0} + m^* \times \frac{M_1 - M_0}{M_0} + l^* \times \frac{L_1 - L_0}{L_0} + d^* \times \frac{D_1 - D_0}{D_0} \right\}$$

Where

V = Adjusted Gross Value of work done month-wise for items listed under Category-III

R = Gross value of work done month-wise for items listed under Category-III.

'c' = Coefficient of Cement content in the cost of work = Say, 0.50

'm' = Coefficient of materials (other than Cement) content in the cost of work = Say, 0.02

'l' = Coefficient of labour (for all categories) content in the cost of works, = Say, 0.18

'd' = Coefficient of High Speed Diesel Oil content in the cost of work = Say, 0.10

(Coefficients are indicative only, and needs to be taken from the estimate)

'C' = Index for Cement

Index Numbers of Wholesale Prices in India by Groups & Sub Groups (Base 2004-05=100) published in RBI Bulletin, Table No. 21).

Group (I): Non Metallic Mineral Products.

Sub Group c: cement & lime.

'M' = Index for Material (Other than Cement)

Index Numbers for Wholesale Prices in India = by Groups & Sub Groups (Base 2004-05 = 100), published in RBI Bulletin, Table No. 21).

Under Head: All Commodities.

'L' = Labour Index

Consumer Price Index Numbers for Industrial Workers – All India & Selected Centres (Base 2010 = 100) Published by labour Bureau, Simla / RBI Bulletin.

Table No. 18, Under the Head: "All India"

'D' = High Speed Diesel Oil

High Speed Diesel Oil price at outlet of Indian Oil Corporation nearest to the project site. (Selling price inclusive of taxes and duties per litre of H.S.D. Oil)

- D. **Category-IV:** All the balance items not included in Category-I, II & III above (B.O.Q. Item Nos..... i.e. relevant items) (to be calculated for each currency separately)

$$V = R \left\{ m^* \times \frac{M_1 - M_0}{M_0} + d^* \times \frac{D_1 - D_0}{D_0} + l^* \times \frac{L_1 - L_0}{L_0} \right\}$$

Where

V = Adjusted Gross Value of work done month-wise for items listed under Category-IV.

R = Gross value of work done month-wise for items listed under Category-IV.

'm' = Coefficient of materials (other than cement) content in the cost of work = Say, 0.20

'd' = Coefficient of High Speed Diesel Oil content in cost of work = Say, 0.05

'l' = Coefficient of labour (for all categories) content in the cost of works = Say, 0.27

(Coefficients are indicative only, and needs to be taken from the estimate)

'M' = Index for Material

Index Numbers for Wholesales Prices in India = by Groups & Sub Groups (Base 2004-05 = 100), published in RBI Bulletin, Table No. 21).

Under Head: All Commodities.

'D' = High Speed Diesel Oil

High Speed Diesel Oil price at outlet of Indian Oil Corporation nearest to the project site. (Selling price inclusive of taxes and duties per litre of H.S.D. Oil)

'L' = Labour Index

Consumer Price Index Numbers for Industrial Workers – All India & Selected Centres (Base 2010 = 100) Published by labour Bureau, Simla / RBI Bulletin.

Table No. 18, Under the Head: "All India"

Sub-Script for all Categories:

'o' = Refers to index/price as on 28 days prior to latest date for submission of bids.

'1' = Refers to index / price as applicable for the month in which the work is executed for which adjustment is applicable.

ALTERNATIVE-II

$$V = R \left\{ I * X \frac{LI - L_o}{L_o} + s * X \frac{SI - S_o}{S_o} + c * X \frac{CI - C_o}{C_o} + m * X \frac{MI - M_o}{M_o} + d * X \frac{DI - D_o}{D_o} \right\}$$

Where,

V = Amount to be adjusted in Contractor's payment for the work done month-wise.

R = Value of work done excluding the value for those materials supplied by the Corporation at bid stipulated rates and payable month-wise (excluding those extra, additional, substituted and altered items of work, those rates have been worked out and paid on the basis of actual analysis of costs or are based on the current market rate).

'I*' = Coefficient of Labour (for all categories) content in the cost of work = Say, 0.20

's*' = Coefficient of Steel content in the cost of work = Say, 0.15

'c*' = Coefficient of Cement content in the cost of work = Say, 0.24

'm*' = Coefficient of Materials (other than Cement and Steel) content in cost of work = Say, 0.11

'd*' = Coefficient of High Speed Diesel Oil content in the cost of work = Say, 0.10

(Coefficients are indicative only, and needs to be taken from the estimate)

'L' = Labour Index

Consumer Price Index Numbers for Industrial Workers - All India (**Base 2016=100**) published in RBI Bulletin, as available in Table No. 19, or published by Labour Bureau, Ministry of Labour and Employment, Government of India.

'S' = Index for Steel

Index Numbers for wholesales price in India (**Base 2011-12=100**), published in RBI Bulletin, Table No. 21 or Published by Office of the Economic Advisor, Ministry of Commerce and Industry, Govt. of India underfollowing Head of Item:

1.3 MANUFACTURED PRODUCTS

1.3.14 MANUFACTURE OF BASIC METALS

1.3.14.5 Mild Steel - Flat products

'C' = Index for Cement

Index Numbers for wholesales price in India (Base 2011-12=100), published in RBI Bulletin, Table No. 21 or Published by Office of the Economic Advisor, Ministry of Commerce and Industry, Govt. of India under following Head of Item:

1.3 MANUFACTURED PRODUCTS

1.3.13 MANUFACTURE OF OTHER NON-METALLIC MINERAL PRODUCTS

1.3.13.5 Cement, Lime and Plaster

'M' = Index for Material (other than Cement and Steel).

Index Numbers for wholesales price in India (Base 2011-12=100), published in RBI Bulletin, Table No. 21 or Published by Office of the Economic Advisor, Ministry of Commerce and Industry, Govt. of India under Head: 'All Commodities'.

'D' = High Speed Diesel Oil.

High Speed Diesel Oil price at outlet of Indian Oil Corporation nearest to the project site. (Selling price inclusive of taxes and duties per litre of H.S.D. Oil)

Sub-Script for all Categories:

'o' = Refers to index/price as on 28 days prior to latest date for submission of bids.

'1' = Refers to index / price as applicable for the month in which the work is executed for which adjustment is applicable.

[Note: The adoption of any one of the above two Alternatives will be decided by the Tendering Authority depending upon the nature of work.]

(iii) General

Provided further that adjustment on account as provided in sub-clause 74.1(i) and 74.1(ii) above shall be subject to the following:

- a. This Clause shall be applicable only for the work that is carried out within the Contract period or any extended period not attributable to the Contractor in pursuant of Clause 24 of Conditions of Contract.

In the event of grant of extension of time for reasons attributable to the contractor the price variation for the value of work done during such extended period shall be payable to the Contractor as per relevant indices applicable to the month upto which extension has been granted for reasons not attributable to the Contractor or the current indices/prices whichever is more favourable to the Employer.

- b. Variations arising on account of payment related to rates for extra, altered, substituted items whose cost has been worked out on actual analysed cost or on market price basis, as envisaged in Clause No. 33(ii)(c), shall be regulated considering the date of inputs cost considered for working out the analysed rates as the base date for the indices.
- c. If Secured Advance is availed by the Contractor against any materials, the monthly Price Adjustment/ Variation for the work done shall be worked out by deducting the cost of materials for which secured advance was drawn, to the extent of utilisation in the month under consideration from the total value of work done ('R') during the month under consideration in line with provision of Secured Advance included at Clause No.71(iii) of Part-III, Vol-1 of Bid document.
- d. Price Adjustment/Variation shall not be applicable on those materials supplied by the Corporation at bid stipulated rates (Refer Clause No. 33 (ii), Part-II, Vol-1).
- e. No claim, whatsoever, for Price Adjustment/Variation, other than those stipulated above, shall be entertained.
- f. To the extent that full compensation for any rise or fall in costs to the contractor is not covered by the provisions of this or other clauses in the Contract, the unit rates and prices included in the Contract shall be deemed to include amounts to cover the contingency of such other rise or fall of costs. Further, any increase, direct or indirect, in the cost of construction due to any increase in minimum wage or increase in provision of labour amenities and benefits in excess of those applicable on the Base Date, shall not be payable to the Contractor separately except as per the provision of this price adjustment clause.
- g. Subject to provisions of Sub-Clause 74.1 (ii) and (iii) above, provisional monthly payment on account of price variation on contract rates will be made to the contractor on the basis of latest available provisional price indices and the same shall be adjusted as and when the final indices of that period are available.
- h. In case of discontinuation of WPI / CPI Series and publication of new series with different base date with a linking factor for conversion of index of new series to the old series, calculation of price variation will be done using the indices of new series along with linking factor, as published by the aforesaid Authorities, with effect from the period that the indices of the old series become unavailable.

However, if the new series does not provide the linking factor and the Reference Date falls in the overlapping period of old & new series, the new series shall be used without use of linking factor and current as well as base indices of the new series shall be used with effect from the date that the indices of the old series

become unavailable.

If the Reference Date is earlier than the date of commencement of the new series, the linking factor between the new and the old series shall be derived using the following method:

Linking Factor for a commodity = (Arithmetic Average of the monthly indices of the commodity in the old series during last 3 years of overlapping period) / (Arithmetic Average of the corresponding monthly indices of the commodity in the new series, during the last 3 years of overlapping period).

The price variation after discontinuation of the old series shall be worked out by using the indices of new series multiplied by the linking factor derived as per the formula given above.

If the indices of items/commodities indicated in the Formula for Price Adjustment are not available in the new series, then these items/ commodities shall be substituted by suitable equivalent items/ commodities matching with the nature of work from the new series based on the similarity of the trend of the indices of the concerned items/ commodities in the common/ overlapping period. The most similar commodity/item in the new series shall then be used in the Price Adjustment Formulae. Decision on selection of substitute items/ commodities from the new series shall be taken by the Engineer-in-Charge, which shall be binding on the contractor.

- i. The Price adjustment for each currency shall be paid separately.

74.2 ADJUSTMENTS FOR CHANGES IN LEGISLATION:

The Contract Price shall be adjusted to take account of any increase or decrease in Cost resulting from a change in the Laws of the Country (including the introduction of new Laws and the repeal or modification of existing Laws) or in the judicial or official governmental interpretation of such Laws, made after the Base Date (i.e. 28(twenty eight) days prior to the latest date of submission of bids), which affect the Contractor in the performance of obligations under the Contract.

If the Contractor suffers (or will suffer) delay and/or incurs (or will incur) additional Cost as a result of these changes in the Laws or in such interpretations, made after the Base Date, the Contractor shall give notice to the Engineer -in-Charge and shall be entitled subject to Clause 63 [Procedure for Claims] to:

- (a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 24 [*Completion Time and Extension*], and
- (b) payment or deduction of any such cost which shall be adjusted in the Contract Price.

After receiving this notice, the Engineer-In-Charge shall proceed to agree or determine these matters.

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. Notwithstanding the foregoing, such additional or reduced cost shall not be separately paid if the same shall already have taken into account in the indexing or any inputs to the Price Adjustment Formulae in accordance with the provisions of Clause 74.1. Provided that in the event of there being statutory variation in the rates of royalty charges/ fresh levy of royalty on coarse & fine aggregates, the same

shall be reimbursed to or recovered from the Contractor upon submission of satisfactory documentary evidence of having made the payment at revised rates.

Provided always that any variations resulting from the changes in legislation, on POL (Petrol, diesel, oil and lubricants) or on the labour and staff of the Contractor, shall be deemed to be included in the Adjustment for Changes in Cost (Price Adjustment formula) included in Clause 74.1 hereof and shall not be paid separately by the Corporation under this sub-clause 74.2.

75. CURRENCY RESTRICTIONS

If, after the date 28 (twenty eight) days prior to the latest date for submission of bids for the Contract, the Government or authorised Agency of the Government of the Country in which the Works are being or are to be executed imposes currency restrictions and/or transfer of currency restrictions in relation to the currency or currencies in which the Contract Price is to be paid, the Corporation shall reimburse any loss or damage to the Contractor arising therefrom, without prejudice to the right of the Contractor to exercise any other rights or remedies to which he is entitled in such event.

76. RATES OF EXCHANGE

Where the Contract provides for payment in whole or in part to be made to the Contractor in foreign currency or currencies, such payment shall not be subject to variations in the rate or rates of exchange between such specified foreign currency or currencies and the currency of the country in which the Works are to be executed.

77. CURRENCY PROPORTIONS

Where the Corporation has required the bid to be expressed in a single currency, but with payment to be made in more than one currency and the Contractor has stated the proportions or amounts of other currency or currencies in which he requires payment to be made, the rate or rates of exchange applicable for calculating the payment of such proportions or amounts shall, unless otherwise stated in these Conditions, be those prevailing, as determined by the concerned authorised Bank of the country in which the Works are to be executed, on the date 28 (twenty eight) days prior to the latest date for the submission of tenders for the Contract, as has been notified to the Contractor by the Corporation prior to the submission of tenders or as provided for in the bid.

78. SUBSTANTIAL CHANGES IN CURRENCY REQUIREMENTS

The foreign and local currency portions of the amount beyond 1.25% of Contract Price shall be amended by Agreement between the Corporation and the Contractor to reflect any substantial changes in the expected foreign and local currency requirements of the Contractor during the execution of the Works, provided that:

- a. the Contractor shall inform the Corporation and the Engineer-in-Charge whenever any such substantial change may occur; or
- b. the Engineer-in-Charge may recommend a review of such expected requirements if in his judgement there is evidence of a change in the country of origin of materials, Plant, or services to be provided under the Contract which should result in any substantial change of such expected requirements.

79. FOREIGN PERSONNEL

The Contractor shall submit to the Purchaser data on all personnel he proposes to bring into India for the performance of the works under the Contract, at least 60(sixty) days

prior to their departure for India. Such data will include name of each person, his present address, his assignment and responsibility in connection with the works and a short resume of his qualification, experience etc. in relation to the work to be performed by him.

Any person found unsuitable and unacceptable by the Purchaser shall not be brought to India. For any person brought to India, if found unsuitable or unacceptable by the Purchaser, the Contractor shall, within reasonable time, make alternative arrangements for providing a suitable replacement and repatriation of such unsuitable personnel.

No person brought to India for the purpose of the work shall be repatriated without the consent of the Purchaser in writing based on a written request from the Contractor for such repatriation, giving reasons for such action to the Engineer-in-Charge. The Purchaser may give permission for such repatriation, provided he is satisfied that the progress of works will not suffer due to such repatriation.

The cost of Pass-ports, visas and all other travel expenses to and from India incurred by the Contractor shall be on his account. The Purchaser shall not provide any residential accommodation and / or furniture for any of the Contractor's personnel including Foreign personnel and the Contractor shall make his own arrangements for such facilities in the area allotted in site to him by the Purchaser for the purpose.

The Contractor and his expatriate personnel shall respect all Indian Acts, Laws, Rules and Regulations and shall not in any way interfere with Indian political and religious affairs and shall conform to all other rules and regulations of Government of India, that may be established on them from time to time. The Contractor's expatriate personnel shall work and live in close co-operation and co-ordination with their co-workers and community and shall not engage themselves in any other employment, either part-time or full-time nor shall they take part in any local politics.

The Purchaser shall assist the Contractor, to the extent possible, in obtaining necessary permits to travel to India and back, by issuing necessary certificates and other information as needed by the Governments Agencies.

80 JOINT AND SEVERAL LIABILITY

If the Contractor is a Joint Venture as per stipulations of Notice Inviting Bids, all such persons/firms shall be jointly and severally bound to the Corporation for the fulfilment of the terms of the Contract and shall designate one of such persons/firms to act as the leader with authority to bind the Joint Venture. The composition or the constitution of the Joint Venture shall not be altered without the prior consent of the Corporation.

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**Appendix-I: Construction / Completion Schedule of Work(s)
and Compensation for Delay**

Construction / Completion Schedule of Work(s) and Compensation for Delay

Serial No.	Group/ Sub-Group (If any)	Value of Group	Completion time /date	Compensation For Delay	Remarks
1	2	3	4	5	6
1a	A	C_A		0.5% of C_A per week of delay subject to maximum of 10% of C_A	
1b	B	C_B		0.5% of C_B per week of delay subject to maximum of 10% of C_B	
1c	C	C_C		0.5% of C_C per week of delay subject to maximum of 10% of C_C	
2	Whole of the Works under the contract (Contract Sum)	$C_W = (C_A + C_B + C_C)$		0.5% of C_W per week of delay subject to maximum of 10% of C_W	

Illustration to be treated for guidance only:

- Suppose the work relating to Group "A" in Bill of Quantities, the value of all items of the aforesaid group "A" as per the Contract being " C_A ", has not been completed before expiry of the stipulated period and the delay in completion of such works is " X_A ." weeks, the compensation payable by the Contractor will be " Y_A ", where:
 $Y_A = Z_A \times C_A$
 $Z_A = [(0.5 \times X_A)/100]$ but with a maximum value of (10/100)
- Suppose compensation has been recovered from the Contractor for delay in completion of works under Group/ Sub Group "A" as mentioned at (a) above, and the Works in respect of Group / Sub Groups "B" under the Contract has been completed within the stipulated period, but the remainder of whole of the Work under the Contract (the Contract Sum of which is " $C_{W-A-B} = C_W - C_A - C_B$ " remains incomplete, say " X_{W-A-B} " weeks beyond the stipulated period of completion, then the compensation payable under the Clause will be as " Y_{W-A-B} ", where:
 $Y_{W-A-B} = Z_{W-A-B} \times C_{W-A-B}$
 $Z_{W-A-B} = [(0.5 \times X_{W-A-B})/100]$ but with a maximum value of (10/100)
- However, if completion of whole of the work under the Contract, contract sum of which is C_W is delayed by " X " weeks, then the compensation payable by the contractor under the clause will be " $(0.5/100) \times C_W \times X$, subject to maximum of 10% of C_W and all other compensation on account of delay in completion of any or all other Group(s)/ Sub-Groups, if recovered earlier, shall be released.**

Note:

- The group / sub-group (Column No. 2) shall mean the quarterly quantum works of **all** items proposed in the approved Construction Schedule.
- The completion time (Column No. 4) shall mean the target dates of completion of those works covered under Column No. 2.

(iii) Column No-(2) and (4) are invariably to be incorporated immediately on finalisation of approved construction schedule.

APPENDIX II: LABOUR WELFARE

LABOUR WELFARE

Some of the Principal articles of Contractor's labour regulations and labour welfare are reproduced in this Section for guidance of the bidder, without any commitment on the part of the Corporation.

Bidders shall, however, acquaint themselves with laws and regulations viz. The Contract Labour Act of the Government, as amended from time to time.

1. LABOUR REGULATIONS:

1-1.01 APPLICATIONS:

These rules shall apply to all construction works out under this Contract.

1-1.02 In these regulations, unless otherwise expressed or indicated, the following works and expression shall have the meaning hereby assigned to them:-

- a) "Labour" means workers employed by a Contractor through a Sub-Contractor or by agent on his behalf.
- b) "Fair Wage" means wages which shall include wages for weekly day of rest and other allowances, whether for time or piece work, after taking into consideration prevailing market rate for similar employment in the neighbourhood, but shall not be less than the minimum rates of wage fixed under The Minimum Wages Act.
- c) "Contractor" for the purpose of these regulations shall include an agent or sub-contractor employing labour on the work taken on contract.
- d) "Inspecting Officer" means any Labour Enforcement Officer or Assistant Labour Commissioner of the Chief Labour Commissioner's Organisation.
- e) "Form" means a form appended to these Regulations.

1-1.03 NOTICE OF COMMENCEMENT :

The Contractor shall, within 7(seven) days of commencement of commencement of the work, furnish in writing to the Inspecting Officer of the area concerned the following information.

- a) Name and situation of the work.
- b) Contractor's name and address.
- c) Particulars of the Department for which the work undertaken.
- d) Name and address of Sub-Contractor as and when they are appointed.
- e) Commencement and probable duration of the work.
- f) Number of workers employed and likely to be employed.
- g) "Fair wages" for different categories of workers.

1-1.04 Number of hours of work, which shall constitute a normal working day, for an adult shall be 8(eight) hours. The working day of an adult worker shall be so arranged it is inclusive of intervals, if any, for rest. It shall not spread over more than 12 (twelve) hours on any day. When an adult worker is made to work for more than 8(eight) hours a day or for more than 48(forty-eight) hours in any week, he shall in respect of overtime work be paid wages.

Note: The expression 'Ordinary Rate of Wages' means the fair wage of the worker as entitled for.

1-1.05 WEEKLY DAY OF REST :

Every worker shall be given a weekly day of rest, which shall be fixed and notified at least 10(ten) days in advance. A worker shall not be required or allowed to work on the weekly rest day, provided that no substitution shall result in the worker working for more than 10(ten) days consecutively without a rest day for a whole day.

Where, in accordance with the foregoing provision, a worker working on the rest day has been given a substituted rest day, he shall be paid wages for the work done on the weekly rest day at the overtime rate of wages.

1-1.06 FIXATION OF WAGE PERIODS:

The Contractor shall fix periods in respect of which wages shall be payable. No rest period shall normally exceed one week.

1-1.07 PAYMENT OF WAGES :

- i) Wages due to every worker shall be paid to him directly. All wages shall be paid in current coin or currency or in both.
- ii) Wages of every worker employed on the Contract shall be paid, where the wage period is 1(one) week, within 3(three) days from the end of the wage period and, in any other case, before the expiry of the 7th (seventh) day or the 10th (tenth) day from the end of the wage period accordingly, as the number of workers does not exceed 1,000 (one thousand) or exceeds 1,000 (one thousand).
- iii) Where employment of any worker is terminated by or on behalf of the Contractor, the wages earned by him shall be paid before expiry of the day succeeding the end on which his employment is terminated.
- iv) Payment of wages be made at the work site on a working day when the work is completed before expiry of the wage period, in which case final payment shall be made at the work site within 48 (forty eight) hours of the last working day and during normal working time.

*Note:-*The term "working day" means a day on which a labour is employed on a work, which is in progress.

1-1.08 REGISTER OF WORKMEN :

A register of workmen shall be maintained in the prescribed form of the Corporation (See Appendix IV to this Part) and kept at the work site or as near to it as possible and the relevant particulars of every workmen shall be entered therein within 3 (three) days of his employment.

1-1.09 EMPLOYMENT CARD :

The Contractor shall issue an employment card to each worker of the day of work or entry into his employment. If a worker already possesses such card with him issued by the previous employer, the Contractor shall merely endorse that employment card with relevant entries. On termination of employment, the employment card shall again be endorsed by the Contractor and return to the worker.

1-1.10 REGISTER OF WAGES ETC. :

- i) A register of Wages-cum-Muster Roll in the prescribed form of the Corporation (See Appendix-V of this Part) shall be maintained and kept at the work site or as near to it as possible.

- ii) A wage slip shall be issued to every worker employed by the Contractor at least a day prior to disbursement of wages.

1-1.11 FINES AND DEDUCTION WHICH MAY BE MADE FROM WAGES :

- i) Wages of worker shall be paid to him without any deductions of any kind except the following :-
 - a) Deductions for absence from duty i.e. from the place where as per the term of his employment he is required to work. The amount of deduction shall be in proportion to the period of his absence.
 - b) Deductions for damage to or loss of goods expressly entrusted to the employed person for custody or for loss of money which he is required to account for where such damage or loss directly attributable to his neglect or default.
 - c) Deduction for recovery of advances or for adjustment of over payment of wages. Advance granted shall be entered in a register and
 - d) Any other deduction, which the Government may from time to time, allows.
- ii) No fines shall be imposed on any worker except in respect of such acts and commissions on his part as have approved by the Chief Labour Commissioner.
- iii) No fines shall be imposed on a worker and no deductions on damage or loss shall be made from his wages until the worker has been given an opportunity of showing cause against such fines and/or deductions.
- iv) The amount of fines, which may be imposed in any one wage period on a worker shall not exceed an amount equal to 3(three) paise on a Rupee of the wages payable to him in respect of that wage period.
- v) No fine imposed on a worker shall be recovered from him in instalments or after expiry of 60 (sixty) days from the date on which it was imposed. Every fine shall be deemed to have been imposed on the day of the act or commission in respect of which it was imposed.

1-1.12 PRESERVATION OF REGISTER :

The register of workmen and the register of Wages-cum-Muster Roll required to be maintained under these Regulations shall be preserved for 3 (three) years after the date on which the last entry is therein.

1-1.13 ENFORCEMENT :

The Inspecting Officer shall, either on his own motion or on a complaint received by him, carry out investigations and send a report to the Engineer-in-Charge specifying the amounts representing worker's due and amounts of penalty to be imposed on the Contractor for breach of these Regulations that have to be recovered from the Contractor, including full detail of the recoveries proposed and the reasons therefore. It shall be obligatory on the part of the Engineer-in-Charge on receipt of such a report, to deduct such amounts from payments due to the Contractor.

1-1.14 DISPOSAL OF AMOUNTS RECOVERED FROM CONTRACTOR :

The Engineer-in-Charge shall arrange payment to workers concerned within 45 (forty-five) days from receipt of a report from the Inspecting Officer, except in cases where the Contractor has made an appeal under CLAUSE NO. 1.01 of these Regulations. In case where there is an appeal, payment of worker's dues would be arranged by the Engineer-in-Charge, wherever such payment arises within 30 (thirty) days from

the date of receipt of the decision of the Regional Labour Commissioner or the Labour Commissioner in charge.

1-1.15 WELFARE FUND :

All money that are recovered by the Engineer-in-Charge by way of workers' dues which could not be disbursed to workers within the time limit prescribed above due to reasons such as whereabouts of workers not being known, death of worker etc. and also payments recovered as penalty shall be credited to a fund to be kept under the custody of the Regional Labour Commissioner for such benefit and welfare of workmen employed by Contractors as are prescribed by the Chief Labour Commissioner.

1-1.16 APPEAL AGAINST DECISIONS OF INSPECTING OFFICER :

Any person aggrieved by a decision of the Inspecting Officer may appeal against such decision to the Regional Labour Commissioner concerned within 30 (thirty) days from the date of decision, forwarding simultaneously a copy of his appeal to the Engineer-in-Charge. The decision of the Regional Labour Commissioner shall be final and binding upon the contractor and the workman.

1-1.17 REPRESENTATION OF PARTIES :

- i) A workman shall be entitled to be represented in investigations of enquiry under these Regulations by an Officer of a registered Trade Union of which he is a member, or by an Officer of a Federation of Trade Unions to which the said Union is affiliated or where the workman is not a member of any registered Trade Union, by an Officer of Registered Trade Union connected with or by any other workman employed in the Industry in which the workman is employed.
- ii) A Contractor shall be entitled to be represented in any investigation or inquiry under these Regulations by an Officer of an Association of Contractors of which he is a member, or by an Officer of a Federation or Association of Contractors to which the said Association is affiliated, or where the Contractor is not a member of any Association of Contractors by an Officer of Association of Employers connected with or by any other employer engaged in the industry in which the Contractor is engaged.
- iii) No party shall be entitled to be represented by a legal practitioner in any investigation or inquiry under these Regulations.

1-1.18 INTERPRETATION ETC. :

On any questions as to the application, interpretation or effect of these Regulations, the decision of the Chief Labour Commissioner or the Deputy Chief Labour Commissioner shall be final and binding.

1-1.19 AMENDMENTS :

Government/Corporation may from time to time add to or amend these Regulations and issue such directions, as it may consider necessary, for proper implementation of these Regulations or for the purpose of removing any difficulty, which may arise in the administration there.

1-2 LABOUR :

1-2.01 DEFINITIONS :

- a) "Workplace" means places at which, on average twenty workers are employed.
- b) "Large workplace" means at which on an average 500 (five hundred) or more workers are employed.

1-2.02 FIRST AID :

At any working place, there shall be maintained in a readily accessible place first-aid appliances, including an adequate supply of sterilised Dressing Cotton Wool as prescribed in the Factory Rules of the State in which the work is carried on. The appliances shall be kept in order and in a large workplace, they shall be readily available during working hours.

At large workplaces, where hospital facilities are not available within easy distance of the Work, First Aid posts shall be established and be run by trained compounder. Where a large workplace is remotely situated and far away from regular hospitals, indoor ward shall be provided with 1 (one) bed for every 250 (two hundred and fifty) employees.

Where large workplaces are situated in cities towns or in their suburbs and no beds are considered necessary owing to proximity of city or town hospitals, suitable transport shall be provided to facilitate removal of urgent cases to these hospitals. At any other workplace, some conveyance facilities shall be kept readily available to take injured person or persons suddenly taken seriously ill, to the nearest hospital.

At these workplaces, there shall be provided and maintained an Ambulance Room of the prescribed size, containing prescribed equipment and in the charge of such medical or nursing staff as may be prescribed for this purpose. The relevant provisions of the Factory Rules of the State Government of the area where this is carried out may be taken as prescribed standard.

1-2.03 ACCOMMODATIONS FOR LABOUR :

The Contractor shall, during the progress of the work, provide, erect and maintain necessary living accommodation and ancillary facilities for labour at his own expenses and to standards and scales as approved by the Engineer-in-Charge.

1-2.04 DRINKING WATER :

In every workplace, there shall be provided and maintained at suitable places easily accessible to labour, sufficient supply of cool water fit for drinking.

Where drinking water is obtained from an intermittent Public Water Supply, each workplace shall be provided with storage, where drinking shall be stored.

Every water supply storage shall be at a distance of not less than 50 (fifty) metres from any latrine, drain or other source of pollution. Where water has to be drawn from the existing well which within such proximity of latrine, drain or any other source of pollution, the well shall be entirely closed in and be provided with a trap door which shall be dust and water proof.

A reliable pump shall be fitted to each covered well; the trap door shall be kept locked and opened only for cleaning and inspecting, which shall be done at least once in a month.

1-2.05 WASHING AND BATHING PLACE :

Adequate washing and bathing places shall be provided separately for men and women. Such places shall be kept clean and drain conditions.

1-2.06 SCALES OF ACCOMMODATION IN LATRINES AND URINALS :

There shall be provided within the premises of every workplace, latrines and urinals in an accessible place and the accommodation separately for each of these shall not be less than the following.

SL. NO	SCALES	NO. OF SEATS
A	Where number of persons does not exceed 50	2
B	Where number of persons exceed 50 but does not exceed 100	3
C	For additional persons	3 per 100 or part thereof

In particular case, the Engineer-in-Charge shall have the power to vary the scale, wherever felt necessary.

1-2.07 LATRINES AND URINALS :

Except in workplaces provided with water-flushed latrines connected with a water-borne sewage system, all latrines shall be provided receptacles on dry-earth system which shall be cleaned at least 4 (four) times daily and at least twice during working hours and kept in a strictly sanitary condition. Receptacles shall be tarred inside and outside at least once in a year.

If women are employed, separate latrines and urinals, screened from those of men and marked in vernacular in conspicuous letters "For Women only" shall be provided on the scale laid down in Rule 1-2.06 above. Those for men shall be similarly marked "For Men only". A poster showing the figure of a man and woman only shall be exhibited at the entrance to latrines of each sex. There shall be adequate supply of water or water closet at the latrines and urinals.

1-2.08 CONSTRUCTION OF LATRINES :

Inside walls shall be constructed of masonry or other non-absorbent materials and shall be cement washed inside and outside at least once in a year. The date for cement washing shall be noted in a register maintained for the purpose and kept available for inspection. Latrines shall have at least thatched roof.

1-2.09 DISPOSAL OF EXCRETA :

Unless otherwise arranged by the local sanitary authority, arrangement for proper disposal of excreta by incineration at the workplace shall be made by the Contractor by means of a suitable incinerator approved by the Local Medical Health or Municipal or Cantonment Authorities. Alternatively, excreta may be disposed of by putting a layer of night soil at the bottom of pucca tank prepared for the purpose and covering it with a 15-cm layer of earth for a fortnight (where it will turn to manure).

The Contractor shall, at his own expenses, carry out all instructions issued to him by the Engineer-in-Charge to effect proper disposal of soil and other conservancy work in respect of the Contractor's work-people or employees at the site. The Contractor shall be responsible for payment of any charges, which may be levied by Municipal or Corporation authority for execution of such work on his behalf.

1-2.10 PROVISION OF SHELTERS DURING REST :

At every workplace, there shall be provided, free of cost, 4 (four) suitable sheds, 2(two) for meals and 2(two) others for rest, separately for male and female labour. Height of each shelter shall not be less than 3 (three) metres from floor level to lowest part of the roof. Sheds shall be kept clean and the space provided shall be on the basis of at least 0.5 sq.m per head.

1-2.11 CRECHES :

At a place where 20 (twenty) or more woman workers are ordinarily employed, there shall be provided at least 1 (one) hut for use of children under the age of 6 (six) years of such women. Huts shall not be constructed to a standard lower than that of thatched roof, mud floors and walls with wooden planks spread over mud floor and covered with matting.

Huts shall be provided with suitable and sufficient opening for light and ventilation. There shall be adequate provision of sweepers to keep the places clean. There shall be 2 (two) 'Dhaies' in attendance. Sanitary utensils shall be provided to the satisfaction of Local Medical, Health and Municipal or Corporation authorities. Use of huts shall be restricted to children, their attendance and mothers of children.

Where the number of women workers of is more than 25 (twenty five) but less than 50 (fifty), the Contractor shall provide at least 1 (one) hut and 1(one) 'Dhai' to look after the children of women workers.

Size of creche(s) shall vary according to the number of women workers employed.

Creche(s) shall be properly maintained and necessary equipment like toys etc.

1-2.12 CANTEEN :

A cooked food canteen on a moderate scale shall be provided for the benefit of workers, wherever it is considered necessary.

Planning, sitting, erection of the above mentioned structures shall be approved by the Engineer-in-Charge, and the whole of such temporary accommodation shall at all times during the progress of the works be kept tidy and in a clean and sanitary condition to the satisfaction of the Engineer-in-Charge, solely at the Contractor's expenses. The Contractor shall conform generally to sanitary requirements of Local Medical, Health and Municipal or Corporation Authorities and, at all times, adopt such precautions as may be necessary to prevent soil pollution of the site.

On completion of the works the whole of such temporary structures shall be cleared away, all rubbish burnt, excreta or other disposal pits or trenches filled in and effectively sealed off and the whole of site left clean and tidy to the entire satisfaction of the Engineer-in-Charge , solely and at the Contractor's expenses.

1-2.13 ANTI-MALARIAL PRECAUTIONS :

The Contractor shall, at his own expenses, conform to all anti-malarial instructions given to him by the Engineer-in-Charge, including filling up of any borrow pits which may have been dug by him.

1-2.14 ENFORCEMENT :

The Inspecting Officer or any other Officer nominated in this behalf by the Engineer-in-Charge shall report to the Engineer-in-Charge all cases of failure to comply with the provisions of these rules either wholly or in part and the Engineer-in-Charge shall impose such fines and other penalties as are prescribed in the conditions.

1-2.15 INTERPRETATIONS :

On any question as to the Application, Interpretation or effect of these rules, the decision of the Chief Labour Commissioner or Deputy Chief Labour Commissioner (Central) shall be final and binding.

1-2.16 AMENDMENTS :

Government/Corporation may, from time to time, add to or amend these rules and issue such directions as it may consider necessary for the proper implementation of these rules or for the purpose of removing any difficulty which may arise in the administration thereof.



APPENDIX III: SAFETY ENGINEERING AND SAFETY CODE

SAFETY ENGINEERING AND SAFETY CODE**1. SAFETY ENGINEERING**

01.01 Accident prevention shall be an essential part of the programme of the Contractor for the Work under this Contract, in order to reduce the cost of construction, measured in terms of :-

- a) Human life sacrificed.
- b) Temporary and Permanent injuries to workers.
- c) Loss of materials resulting from accident.
- d) Loss or damage to equipment.
- e) The cost of Workmen's Compensation Insurance.
- f) Loss of time due to accident.

The Safety programme should be so developed, so as to cope with particular hazards for each operation (blasting, drilling, excavation, transport, cutting of metals, welding, fabricating, handling, erecting).

01.02 General Safety Programme :

The following programme, when vigorously prompted by the Management, may become effective in reducing the accident rate on construction.

- a) Secure full support of Top Management.
- b) Designate someone in the Organisation to direct the Safety programme. He should be responsible for all safety training and should have authority to inspect all operations to ensure that adequate Safety practices are adopted.
- c) Policies of Safety programme.
- d) Develop a Safety programme for each job.
- e) Indoctrinate new employees. Educate the employees regarding the hazards of his work and explain to him how he can reduce the accident to himself and to other workers.
- f) Make Safety practices effective.
- g) Promote good housekeeping.
- h) Maintain adequate first-aid-facilities.
- i) Seek assistance from Insurance carrier, if available.

2. SAFETY CODE :

The Safety code detailed herein below may be followed :-

02.01 Scaffolding and Ladders:

Suitable scaffolding should be provided for workmen for all works that cannot be done from the ground, or from solid construction, except such short period work as can be done safely from ladders. When a ladder is used, an extra mazdoor shall be engaged for holding the ladder and if the ladder is used for carrying materials, suitable footholds and handholds shall be provided on the ladder and the ladder shall be given an inclination not steeper than $\frac{3}{4}$ to 1 ($\frac{3}{4}$ horizontal to 1 vertical).

02.02 Scaffolding and Staging Guards :

Scaffolding or staging more than 3.5 m above the ground and floor swung or suspended from an overhead support or connected with stationary support shall have a guard-rail properly attached, bolted, braced and otherwise secured at least 90 cms. high above the floor or platform or such scaffolding or staging and extending along the entire length of the outside and ends thereof with only such openings as may be necessary for the delivery of materials. Such scaffolding or staging is so fastened as to prevent it swaying from the building or structure.

02.03 Platform gangways and stairways :

Working platform, gangways and stairways should be so constructed that they should not unequally erected. If the height of the platform of the gangway or the stairway is more than 3.5 metre above ground level or floor level, they should be closely boarded, should have adequate width and should be suitably fenced, as described in para 02.02 above.

02.04 Protection for Opening in Floor :

Every opening in the floor of a building, bridge or in a working platform shall be provided with suitable means to prevent the fall of a person or materials by providing suitable fencing or railing whose minimum height shall be 90 cms. In case, it may be necessary to cover the opening temporarily.

02.05 Safe access to Working Places:

Safe and easy means of access shall be provided to all working platforms and other working places. Every ladder shall be securely fixed. No portable single ladder shall be over 9 metres in length, while the width between side rails in rung ladder shall, in no case, be less than 30 cms length. Uniform step spacing shall not exceed 30 cms.

Adequate precaution shall be taken to prevent danger from electrical equipment. No materials in any of the sites of work shall be so stacked or placed to cause danger or inconvenience to any worker or the public. The Contractor shall also provide all necessary fencing and lights to protect the public from accident and shall be bound to bear the expenses of defence or every suit, action or other proceedings at law that may be brought by any person for injury sustained, owing to neglect of the above precautions and to pay the damage and costs which may be awarded in any such suit, action or proceedings to any such persons or which may, with the consent of the Contractor be have to be to paid to compromise any claim of any such person.

02.06 Excavation and Trenching:

All trenches 1 metre or more depth shall, at all times, be supplied with at least one ladder for each 30 metre length or fraction thereof. Ladders shall be extended from bottom of the trench to at least 90 cms. above the surface of the ground. The sides of the trenches which are 1.5 metres or more in depth shall be steeped back to give suitable slope, or securely held by timber bracing so as to avoid the danger of the sides collapsing. The excavated materials shall not be placed within 1.5 metres to the edge of the trench, whichever is more. Cutting shall be done from top to bottom. Under no circumstances undercutting shall be done.

02.07 Blasting Rock :

- a) The Contractor shall observe all existing regulations in the country regarding storage, handling and use of blasting materials.

- b) Care shall be taken to see that no damage is caused to the life and property of the others working nearby and, in case something goes wrong, it shall be fully compensated by the Contractor.

02.08 Demolition:

Before any demolition work is commenced and also during the process of work:

- a) All roads and opened area adjacent to the work site shall either be closed or suitably protected.
- b) No electric cable or apparatus, which is liable to be a source of danger over a cable or apparatus used by the operator shall remain electrically, charged.
- c) All practical steps shall be taken to prevent danger to persons employed from risk of landslide/fire or explosion or flooding, no floor, roof of other part of the building shall be so overloaded with debris of materials as to render it unsafe.

02.09 Safety Equipment:

All necessary personal safety equipment, as considered adequate by the Engineer-in-Charge, should be kept available for the use of the persons employed on the site and maintained in a condition suitable for immediate use, and the Contractor should take adequate steps to ensure proper use of equipment by those concerned.

- a) Workers employed on handling/mixing asphaltic materials, cement, lime mortars/concrete, flyash, surki etc., shall be provided with protective footwear, protective goggles, protective masks, etc.
- b) Those engaged in white-washing and mixing or stacking of cement bags or any materials which is injurious to the eyes shall be provided with protective goggles and masks.
- c) Those engaged in welding works shall be provided with welder's protective eye-shields.
- d) When workers are employed in sewers and manholes which are in use, the Contractor shall ensure that the manhole covers are opened and are ventilated at least for an hour before the workers are allowed to get into the manholes and the manholes so opened shall be cordoned off with suitable railing and provided with warning signals or boards to prevent accidents to the public.
- e) The Contractor shall not employ men below the age of 18(eighteen) and women on the work of painting with products containing lead in any form. For men above the age of 18 (eighteen) are employed on the work of lead painting, the following precautions shall be taken:-
 - i) No paint containing lead or lead products shall be used as readymade paint.
 - ii) Suitable facemasks should be supplied for use by the Workers when paint is applied and in having lead paints dry rubbed and scrapped.
 - iii) Overall shall be supplied by the Contractor to the workmen and adequate facilities shall be provided to enable working painters to wash during cessation of work.

02.10 Drowning Rescue and First Aid :

When the work is done near any place where there is risk of drowning, all necessary equipment should be provided and kept ready for use and all necessary steps taken for prompt rescue of any person in danger and adequate provision should be made for prompt first-aid treatment of all injuries likely to be sustained during the course of work.

02.11 Hoisting Machines and Tackle like Cranes Cableways etc.

Use of hoisting machines and tackle, including their attachments, anchorage and supports, shall conform to the following standards or conditions:

- i) a) These shall be of good mechanical construction, sound materials and adequate strength and free from patent defect and shall be kept in good repair and good in working order.
b) Every rope used in hoisting or lowering material, as a means of suspension shall be of durable quality and of adequate strength and free from patent defects.
- ii) Every crane or cableway operator or hoisting appliance operators shall possess requisite qualifications, and no person under the age of 21 (twenty one) years shall be placed in charge of any hoisting machine, including any scaffold, which will give signal to the operator.
- iii) In case of hoisting machines and cabin ring hook shackle, swivel and pulley block used in hoisting or lowering as a means of suspension, the safe working load shall be ascertained by adequate means. Every hoisting machine with the working load shall be used. In case of hoisting machines having a variable safe working load, each safe working load of the conditions under which it is applicable, shall be clearly indicated. No part of any machine or of any gear referred to above in this paragraph shall be loaded beyond the safe working load, except for the purpose of testing.
- iv) In case of departmental machines, the safe working load shall be notified by the Engineer-in-Charge. As regards Contractor's machines, the Contractor shall notify the safe working load of the machine to the Engineer-in-Charge whenever he brings any machinery to the site of work, and shall get the same verified by the Engineer-in-Charge before putting the machine to use.
- v) Every precaution shall be taken by the Contractor to ensure that the cableway skips are visible during night.
- vi) The cableway skips shall be firmly attached to the hooks.
- vii) The travelling and hoisting ropes of the cableway shall be of good quality and shall not break during operation of the cableway.
- viii) The limit switches showing the limits of travel of cableways shall function properly at all times and shall be easily visible from the operator's seat.
- ix) The rope guides shall be so spaced to prevent any accident due to slippage of carriage from the ropes.
- x) Suitable signal men and telephone operator shall be posted on duty whenever cable ways or other hoists are operated.
- xi) Cableways and ropes shall be inspected frequently to ensure safety of the people and materials or work sites and nearby.

02.12 Motors, gearing, etc.:

Motors, gearing, transmission electric wiring are other dangerous parts of hoisting appliances shall be provided with efficient safeguards. Hoisting appliances shall be provided with such means as will reduce to the minimum the risk of accidental descent of the load. Adequate precautions should be taken to reduce to the minimum the risk of any part of a suspended load becoming accidentally displaced. When workers are employed on electrical installations which are already energized, insulating material, wearing apron such as gloves, sleeves, and boots, as may be necessary, shall be provided. The workers

shall not wear any rings, watches and carry keys or other materials which are good conductors of electricity.

02.13 Maintenance:

All scaffolds, ladders and other safety devices mentioned or described herein shall be maintained in safe conditions and no scaffolds, ladder or equipments shall be altered or removed while it is in use. Adequate washing facilities shall be provided at or near places of work.

02.14 Display of Safety Provisions :

All Safety provisions shall be brought to the notice of all concerned by display on a Notice Board at a prominent place at work spot. The persons responsible for receiving and processing complaints of safety code shall be named therein by the Contractor.

02.15 Inspection by Officers:

To ensure effective enforcement of rules and regulations relating to Safety precautions, all arrangements made by the Contractor shall be opened to inspection by the Engineer-in-Charge or his representative.

02.16 Safety Act and Rules:

Notwithstanding the above Clauses, there is nothing in these to exempt the Contractor from exclusion of operations of any other Act or rules in force in the Republic of India.

02.17 Additional Compensation:

No additional compensation will be paid to the Contractor for any works carried out for Safety Engineering or Code. The rates quoted by the Contractor for various items shall include these incidental costs.

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APPENDIX IV: Register of Workers Form

Register of Workers Form

i) Name and Address of the Contractor / Sub contractor _____

ii) Agreement No. _____

S.I. No.	Identity Card No. Of worker	Name and Surname of the Worker (full in Categorically)	Age & Sex	Father's Husband's Name	Nature of Employment Designation	Details of Wages & Other Allowances paid	Permanent Home Address of employee (Village / District)	Present address	Date of commencement of Employment	Date of termination or leaving Employment	Details of Wages & Other Allowances last Received	Signature or thumb Impression of the Employee	Affixed attested copy of passport size photograph of the worker	Remark
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15

Notes

The Contractor shall furnish a copy of the Register of workmen to the Engineer-in-Charge of the work for permanent record in his Office.

APPENDIX V: Register of Wages-cum-Muster Roll Form

Register of Wages cum Muster Roll Form

i) Name and Address of the Contractor / Sub contractor _____

ii) Agreement No. _____

iii) Wages period _____

	1	S.I No
	2	Identity Card No of worker
	3	Name and Surname of the
	4	Father's/husband's name
	5	Sex
	6	Designation/Nature of work
	7	Daily Attendance
	8	Total Attendance
	9	Fair wage payable
	10	Wages payable for overtime
	11	Overtime worked
	12	Fixed daily allowance
	13	Other allowances
	14	Basic
	15	Overtime wages
	16	Total wages paid
	17	Fine
	18	Deduction for damage or loss
	19	House rent
	20	Recovery of Advances
	21	Other deduction
	22	Net wages payable
	23	Other payments
	24	Signature or Thumb impression of the worker

APPENDIX VI: Materials to be issued by the Corporation

MEMORANDUM OF MATERIALS TO BE ISSUED BY THE CORPORATION

SL. NO.	MATERIALS (Explosives)	UNIT	ISSUE RATE
(i)	Class II Emulsion Explosives (25 mm, 32 mm, 40 mm & 50 mm)	Kg INR
(ii)	LDD – 3 Metre	No. INR
(iii)	LDD – 5 Metre	No INR
(iv)	Electric Detonator (ED)	No INR
(v)	Ordinary Detonator (OD)	No INR
(vi)	Safety Fuse (Per Coil 10/15 Metre)	Coil INR
(vii)	Detonating Cord	Metre INR
(viii)	Non- Electric detonator (NED)	No. INR

The above materials shall be issued by the Corporation subject to the following conditions:

- (a) All materials as stated above shall be issued subject to availability in the Corporation Store at Project Site. Such material shall be issued as per requirement of the work as assessed by the Engineer-in-Charge. The materials issued to the Contractor shall be recovered at the above specified rates. The materials will be issued to the Contractor for the works within the scope of the Contract from the Project Store. If the materials stated above are to be used by the Contractor for bonafide purposes such as ancillary, preliminary/auxiliary works to the main works under this Contract, the same can be used with due permission from the Engineer-in-Charge and the recovery rates will be as those applicable as per the rates at on the date of issue. These materials shall be issued provided the Engineer-in-Charge is satisfied himself of bonafide use.
- (b) The materials, which will not be consumed for this work, if not returned in good condition, then these will be, recovered from the Contractor's bill at double the issue rates.
- (c) All materials issued by the Corporation and taken out from the Corporation store by the Contractor for use in the work will be in the custody of the Contractor and, in that case, the Corporation is in no way responsible for any loss or damage to the materials issued. All costs of collection, loading, transportation, unloading, storage etc. whatsoever as may be required, against these materials issued shall be borne by the Contractor at his own cost.
Materials in transit and storage have to be suitably insured against such cost with no extra cost to the Corporation.

❖ General:-

- (a) For issue of store materials all other relevant clauses mentioned else where in this document shall prevail.
- (b) However, in case any item of materials as mentioned above cannot be provided by the Corporation at any time, the Contractor shall not claim any compensation or extra benefit whatsoever except for grant of time extension by the Corporation.

Annexure-I

Mechanism for determination of Cost related to extension of Time for Completion due to the events entitle cost claims to the Contractor under various sub-clauses of Conditions of Contract:

The valuation of time related cost claims of the Contractor shall be as given below:

(a) Cost of owned/leased/hired Equipment by the Contractor:

Cost of owned Equipment shall comprise of the following elements:

i. Depreciation Cost

Annual Depreciation = $0.9 \times \text{Book Value} / \text{Life in years}$.
(Based on life in years)

Depreciation cost = $\{(\text{Idle period in days} / 365) \times 0.50 \times \text{Annual Depreciation}\}$.

However, if the Equipment has completed its scheduled life in years or hours, in that case the depreciation shall be considered as zero.

ii. Interest on capital Investment: (Rate of Interest #/100) × Average Annual Cost

The average annual cost is determined as follows:

Average Annual Cost = $\text{Book value of Equipment} \times (n+1)/2n$

Where:

- “n” refer for number in years of life of Equipment.
- Book value = purchase price plus freight, insurance, all taxes and duties, port clearance charges, erection and commissioning charges and other incidental charges.

the interest rate shall be the rate of interest applicable for Construction Equipment advance in the Contract.

iii. Insurance Charges

Insurance charges in respect of insurance policy applicable and availed for the Equipment shall be considered as per actuals.

(b) Cost of Labour:

The labour directly engaged for the works at the Site by the Contractor or through sub-contractor, as verified by the Engineer, will be reimbursed in case Contractor produces proof that idle labour has been paid wages.

Cost of equipment related labour, as verified by the Engineer, will be worked out as per CWC norms limited to actual whichever is lower.

The above cost will be considered for payment based on the supporting details such as attendance sheet, receipt of deposit of provident fund duly certified by the Contractor.

In addition to actual cost of labour, indirect charges shall be considered. The indirect charges (other than salary) shall be 40% (forty percent) for skilled and unskilled labour. Indirect charges shall be applicable on the basic wages. Basic wages means component of wages on which statutory deductions like Employee Provident Fund (EPF) is deposited to the statutory authority.

(c) Cost of Site staff

The Cost of site executives/supervisory staff shall be considered for payment as per actual. The site staff implies all the staff posted at the site excluding staff posted at the Head office. Cost of site staff shall be supported by relevant documents. The cost shall be considered for payment based on the supporting details in form of pay ledger, bank details, detailed pay slips, Form 16 of Income tax issued by the Contractor as well as Sub-Contractor's and receipt of deposit of Provident Fund duly certified by the Contractor. In this head, staff physically deployed at site shall only be considered.

(d) Interest on Mobilization Advance

The Contractor shall give amount of expenditure along with their period duly certified by their statutory auditors towards the utilization of the mobilization advance for the Works. On the basis of the certification made by the Statutory Auditor an average investment for the period may be considered and the amount of interest on mobilization advance worked out accordingly. Further, for the purpose of calculation of interest on mobilization advance, interest rate as mentioned in the relevant Contract shall be considered. The cost of construction equipment purchased by the Contractor out of the mobilization advance on which interest on capital investment is already considered at Sl. No. a (ii) above shall be excluded for the purpose of working out interest on Mobilization advance.

However, where the events giving rise to admissible cost claim to the Contractor do not disrupt whole of the Works but only particular component/structure of the Project, then the admissible interest on mobilization advance payable to the Contractor shall be worked out on prorata basis.

(e) Overheads

Overhead costs include but not limited to Office and share of head office expenses, Legal charges, General establishment, Watch and Ward, Local conveyance, Travelling expenses, Social welfare, salaries of Managerial and clerical staff etc. and Publicity etc.

$$\text{Overhead Charges} = \frac{5\% \text{ of Accepted Contract Amount} \times \text{authorized Time Extension entitling cost claim}}{\text{Time for Completion specified in Appendix to Tender}}$$

The lump-sum component of overhead as 5% shall cover all other charges not included expressly in any of the items of claim at Sl. (a) to (d) as above.

(f) Bank Guarantees and Insurance charges

These charges are to be considered towards cost compensation, for the period entitling cost claims to the Contractor, based upon documentary evidence of payment of premium amount by the Contractor towards Performance Bank Guarantee, Retention Money Bank Guarantee, Contractor's All Risk (CAR) Insurance Policy etc.

(g) The taxes applicable on cost claims

The applicable taxes on the above elements of cost claim shall be reimbursed to the Contractor as per actuals based on the documentary evidence.

Annexure-II

ESCROW ACCOUNT AGREEMENT

THIS ESCROW ACCOUNT AGREEMENT is entered into on this the *** day of *** 20**.

AMONGST

- 1 [**** LIMITED], a company incorporated under the provisions of the Companies Act, 1956 and having its registered office at **** (hereinafter referred to as the “Contractor” which expression shall, unless repugnant to the context or meaning thereof, include its successors, permitted assigns and substitutes);
- 2 ****[name and particulars of the Escrow Bank] and having its registered office at ****(hereinafter referred to as the “Escrow Bank” which expression shall, unless repugnant to the context or meaning thereof, include its successors and substitutes); and
- 3 NEEPCO Limited, (hereinafter referred to as the “NEEPCO and/or the Employer”, which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns).

WHEREAS:

- (A) The Employer had entered into Contract Agreements with the Contractor (the “Contract Agreements”) for execution of works of the ***** (name of the project/ work).
- (B) Accordingly, as per clause 14.7 of Particular conditions of the contract, the Contractor is required to establish an Escrow Account, inter alia, on the terms and conditions stated therein.

NOW IT IS HEREBY AGREED as follows:

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement, the following words and expressions shall, unless repugnant to the context or meaning thereof, have the meaning hereinafter respectively assigned to them:

“Agreement” means this Escrow Account Agreement and any amendment thereto made in accordance with the provisions contained herein;

“Escrow Account” means an escrow account established in terms of and under this Agreement;

“Parties” means the parties to this Agreement collectively and “Party” shall mean any of the Parties to this Agreement individually;

1.2 Interpretation

- 1.2.1 The words and expressions beginning with capital letters and defined in this Agreement shall have the meaning ascribed thereto herein, and the words and expressions used in this Agreement and not defined herein shall, unless repugnant to the context, have their literal English meaning. Words importing the singular only also include the plural and vice versa where the context requires.

- 1.2.2 References to Clauses are, unless stated otherwise, references to Clauses of this Agreement.

2 ESCROW ACCOUNT

2.1 Escrow Bank to act as trustee

2.1.1 The Contractor hereby appoints the Escrow Bank to act as trustee for the Employer and the Contractor in connection herewith and authorises the Escrow Bank to exercise such rights, powers, authorities and discretion as are specifically delegated to the Escrow Bank by the terms hereof together with all such rights, powers, authorities and discretion as are reasonably incidental hereto, and the Escrow Bank accepts such appointment pursuant to the terms hereof.

2.1.2 The Contractor hereby declares that all rights, title and interest in and to the Escrow Account shall be vested in the Escrow Bank and held in trust for the Employer and the Contractor, and applied in accordance with the terms of this Agreement. No person other than the Employer, and the Contractor shall have any rights hereunder as the beneficiaries of or as third party beneficiaries under this Agreement.

2.2 Acceptance of Escrow Bank

The Escrow Bank hereby agrees to act as such and to accept all payments and other amounts to be delivered to and held by the Escrow Bank pursuant to the provisions of this Agreement. The Escrow Bank shall hold and safeguard the Escrow Account during the term of this Agreement and shall treat the amount in the Escrow Account as monies deposited by the Contractor or the Employer with the Escrow Bank. In performing its functions and duties under this Agreement, the Escrow Bank shall act in trust for the benefit of, and as agent for, the Employer and the Contractor or their nominees, successors or assigns, in accordance with the provisions of this Agreement.

2.3 Establishment and operation of Escrow Account

2.3.1 Immediately after execution of this Agreement, the Contractor shall open and establish the Escrow Account with the **** (name of Branch) Branch of the Escrow Bank. The Escrow Account shall be denominated in Indian National Rupees.

2.3.2 The Escrow Bank shall maintain the Escrow Account in accordance with the terms of this Agreement and its usual practices and applicable regulations, and pay the maximum rate of interest payable to similar customers on the balance in the said account from time to time.

2.3.3 The Escrow Bank and the Contractor shall, after consultation with the Employer, agree on the detailed mandates, terms and conditions, and operating procedures for the Escrow Account, but in the event of any conflict or inconsistency between this Agreement and such mandates, terms and conditions, or procedures, this Agreement shall prevail.

2.4 Escrow Bank's fee

The Escrow Bank shall be entitled to receive its fee and expenses in an amount, and at such times, as may be agreed between the Escrow Bank and the Contractor. For the avoidance of doubt, such fee and expenses relating to opening and operation of said account shall be borne by the Contractor. The Employer shall not be held liable for any claim of Escrow Bank from the Contractor with regard to such fee and expenses.

2.5 Rights of the parties

The rights of the Employer and the Contractor in the monies held in the Escrow Account are set forth in their entirety in this Agreement and the Employer and the Contractor shall have no other rights against or to the monies in the Escrow Account.

3 DEPOSITS INTO ESCROW ACCOUNT

- 3.1 Employer intends that funds released for the project as advance or against work done is deposited in the ESCROW account to ensure that these are utilized for the project itself and Contractor & their sub-contractors/sub- vendors are not able to divert project funds to their other business.

3.2 Interest on deposits

The Escrow Bank agrees and undertakes that all interest accruing on the balances of the Escrow Account shall be credited to the Escrow Account and shall be used to make due payments in the manner as provided in Clause 4 of this Agreement.

4 WITHDRAWALS FROM ESCROW ACCOUNT

4.1 Withdrawals

The Escrow Bank shall allow withdraw and appropriate the amounts from the Escrow Account strictly in accordance with the instructions issued by the Employer to the Contractor, as mutually agreed/decided by Employer, and Contractor; provided that such amounts shall be appropriated in the following order:

- (a) All payments relating to construction/ completion of the project;
- (b) All payments relating to construction/completion of other projects of the Employer under execution by the Contractor; and
- (c) Balance, if any, in accordance with the instructions of the Contractor after receiving the prior written approval of the Employer.

4.2 All payments relating to construction/completion of the Project

- (i) The Contractor shall provide the Employer with the following details:
 - (a) The amounts due for payment to the suppliers/sub-contractors in respect of the work already completed;
 - (b) The remaining works in the Project along with the estimated costs of the respective works and the schedule for completion of such remaining works.
 - (c) The monthly/bi-annual/annual or any other periodic schedule of funds, (as agreed with the Employer), required to complete the above remaining works.
- (ii) The Project authority shall verify the genuineness in respect of the above overdue payments/remaining works, the associated costs, the schedule and the (periodic) requirement of funds.
- (iii) On approval of Employer and subject to availability of funds in the designated Escrow Account, the total requirement of funds shall be earmarked for payment of the outstanding dues and completion of the remaining works of the Projects.
- (iv) The Contractor shall then be allowed to withdraw the funds required to meet his obligations in the order mentioned under (i) above for completion of the project.
- (v) Balance amounts in the Escrow Account, if available, shall be earmarked and concurrently used for the completion of other projects of Employer, as per conditions set forth in this Agreement keeping the progress work in view.

4.3 All payments relating to construction/completion of other projects of the Employer

- (i) Shall be applicable to other projects of the Employer being executed by the Contractor.
- (ii) For each of the other projects, provisions applicable to the main project shall be applicable.

4.4 Post completion of the Project and completion of other projects of the Employer, and subject to availability of funds in the Escrow Account, balance funds shall be appropriated in accordance with the instructions of the Contractor in terms of the this Agreement.

5 Event of Escrow Default

5.1 Following events shall constitute an 'event of default' by the Contractor unless such event of default has occurred as a result of Force Majeure or any act or omission of the Employer or the Escrow Bank:

- (i) The Contractor causes the Escrow Bank to transfer funds to any account of the Contractor in breach of the terms of Escrow account Agreement;
- (ii) The Contractor fails to make any refund due to the Employer in breach of the terms of Escrow account Agreement within 5(five) business days of such refund becoming due;
- (iii) The Contractor commits or causes any other breach of the provisions of Escrow Account Agreement and fails to cure the same within a Cure Period of 5 (five) business days.

6 OBLIGATIONS OF THE ESCROW BANK

6.1 Segregation of funds

Monies received by the Escrow Bank under this Agreement shall, until used or applied in accordance with this Agreement, be held by the Escrow Bank in trust for the purposes for which they were received, and shall be segregated from other funds of the Escrow Bank.

6.2 No set off

The Escrow Bank agrees not to claim or exercise any right of set off, banker's lien or other right or remedy with respect to amounts standing to the credit of the Escrow Account. For the avoidance of doubt, it is hereby acknowledged and agreed by the Escrow Bank that the monies held by the Escrow Bank in the Escrow Account shall not be considered as part of the assets of the Escrow Bank and being trust property, shall in the case of bankruptcy or liquidation of the Escrow Bank, be wholly excluded from the assets of the Escrow Bank in such bankruptcy or liquidation.

6.3 Regulatory approvals

The Escrow Bank shall use its best efforts to procure, and thereafter maintain and comply with, all regulatory approvals required for it to establish and operate the Escrow Account. The Escrow Bank represents and warrants that it is not aware of any reason why such regulatory approvals will not ordinarily be granted to the Escrow Bank.

6.4 Independent Concurrent Audit

A firm shall be engaged to carry out independent concurrent audit for the purpose of monitoring the utilization of funds from escrow bank account.

7 TERMINATION OF ESCROW AGREEMENT

7.1 Duration of the Escrow Agreement

This Agreement shall remain in full force and effect till completion of the Project, unless terminated earlier by consent of all the Parties or otherwise in accordance with the provisions of this Agreement.

7.2 Substitution of Escrow Bank

The Contractor may, by not less than 45 (forty five) days prior notice to the Escrow Bank, the Employer, terminate this Agreement with Escrow Bank and appoint a new Escrow Bank, provided that the new Escrow Bank is acceptable to Employer and arrangements are made to the satisfaction of Employer for transfer of amounts deposited in the Escrow Account to a new Escrow Account established with the successor Escrow Bank. The termination of this Agreement shall take effect only upon coming into force of an Escrow Account Agreement with the substitute Escrow Bank.

7.3 Closure of Escrow Account

The Escrow Bank shall close the Escrow Account at the request made by the Contractor and the Employer and pay any amount standing to the credit thereof to the Contractor. Upon closure of the Escrow Account hereunder, the Escrow Agreement shall be deemed to be terminated.

8 MISCELLANEOUS PROVISIONS

8.1 Governing law and jurisdiction

This Agreement shall be construed and interpreted in accordance with and governed by the laws of India, and the Courts at Shillong shall have jurisdiction over all matters arising out of or relating to this Agreement.

8.2 Waiver of sovereign immunity

The Contractor unconditionally and irrevocably:

- (a) agrees that the execution, delivery and performance by it of this Agreement constitute commercial acts done and performed for commercial purpose;
- (b) agrees that, should any proceedings be brought against it or its assets, property or revenues in any jurisdiction in relation to this Agreement or any transaction contemplated by this Agreement, no immunity (whether by reason of sovereignty or otherwise) from such proceedings shall be claimed by or on behalf of the Contractor with respect to its assets;
- (c) waives any right of immunity which it or its assets, property or revenues now has, may acquire in the future or which may be attributed to it in any jurisdiction; and

8.3 Alteration of terms

All additions, amendments, modifications and variations to this Agreement shall be effectual and binding only if in writing and signed by the duly authorised representatives of the Parties.

8.4 No third party beneficiaries

This Agreement is solely for the benefit of the Parties and no other person or entity shall have any rights hereunder.

8.5 Successors and assigns

This Agreement shall be binding on and shall inure to the benefit of the Parties and their respective successors and permitted assigns.

8.6 Notices

All notices or other communications to be given or made under this Agreement shall be in writing and shall either be delivered personally or sent by courier or registered post with an additional copy to be sent by e-mail. The address for service of each Party and its e-mail are set out under its name on the signing pages hereto. A notice shall be effective upon actual receipt thereof, save that where it is received after 5.30 (five thirty) p.m. on a business day, or on a day that is not a business day, the notice shall be deemed to be received on the first business day following the date of actual receipt. Without prejudice to the foregoing, a Party giving or making a notice or communication by e-mail shall promptly deliver a copy thereof personally, or send it by courier or registered post to the addressee of such notice or communication. It is hereby agreed and acknowledged that any Party may by notice change the address to which such notices and communications to it are to be delivered or mailed. Such change shall be effective when all the Parties have notice of it.

8.7 Language

All notices, certificates, correspondence and proceedings under or in connection with this Agreement shall be in English.

8.8 Original Document

This Agreement may be executed in three counterparts, each of which when **executed and delivered** shall constitute an original of this Agreement.

