



INVITATION FOR BIDS (IFB)

FOR

Design, Supply, Installation, Testing and Commissioning of Electro-Mechanical Equipment

(EM PACKAGE)

Single-Stage: Two-Envelope Bidding Procedure

March 2023

Document Information

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INVITATION FOR BIDS (IFB) / NOTICE INVITING TENDER (NIT)
(National Open Competitive Bidding)

Contract Title: Design, Supply, Installation, Testing and Commissioning of Electro-Mechanical Equipment (EM Package) for Keyi Hydropower Project (23 MW) in Arunachal Pradesh

IFB No: *KEYI-W002-EM*

IFB issued on: *22nd March 2023*

Section 7: General Conditions of Contract

Volume number	Contents	Section No./ Name
Volume-1	Invitation for Bids	Section 0: Invitation for Bids
	Bidding Procedures and Bidding Forms	Section 1: Instructions to Bidders
		Section 2: Bid Data Sheet
		Section 3: Evaluation, Eligibility and Qualification Criteria
		Section 4: Bidding Forms for Technical Bid
		Section 5: Bidding Forms for Price Bid
	Employer's Requirements	Section 6: Employer's Requirements (the contents of this Section include by reference the contents of Volume-2 and Volume -3)
	Conditions of Contract and Contract Form	Section 7: General Conditions of Contract
		Section 8: Special Conditions of Contract
		Section 9: Contract Forms
Volume-2	Technical Specifications	Part-I: Technical Specification for E & M Equipment
		Part-II: Technical Data Sheet
Volume-3	Drawings	Drawings - E & M System Drawings

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A. Contract and Interpretation

1. Definitions

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

- (a) "Contract" means the Contract Agreement entered into between the Employer and the Contractor, together with the Contract Documents referred to therein; they shall constitute the Contract, and the term "the Contract" shall in all such documents be construed accordingly.
- (b) "Contract Documents" means the documents listed in Article 1.1 (Contract Documents) of the Contract Agreement (including any amendments thereto).
- (c) "Contract Price" means the sum specified in Article 2.1 (Contract Price) of the Contract Agreement, subject to such additions and adjustments thereto or deductions therefrom, as may be made pursuant to the Contract.
- (d) "Contractor" means the person(s) named as Contractor in the SCC, and includes the legal successors or permitted assigns of the Contractor.
- (e) "Contractor's Representative" means any person nominated by the Contractor and approved by the Employer in the manner provided in GCC sub clause 17.2 (Contractor's Representative and Construction Manager) hereof to perform the duties delegated by the Contractor.
- (f) "Contractor's Personnel" means the Contractor's Representative and all personnel whom the Contractor utilises on Site or other places where the Works are being carried out, including the staff, labour and other employees of the Contractor and of each Subcontractor; and any other personnel assisting the Contractor in the execution of the Works.
- (g) "Construction Manager" means the person appointed by the Contractor's Representative in the manner provided in GCC sub clause 17.2.4.
- (h) "Contractor's Equipment" means all facilities, equipment, machinery, tools, apparatus, appliances, or things of every kind required in or for installation, completion and maintenance of Facilities that are to be provided by the Contractor, but does not include Plant, or other things intended to form or forming part of the Facilities.
- (i) "Commencement Date" means the date so stipulated and indicated in the Notice to Proceed with the execution of the Works/ work on the Facilities, issued by the Employer to the Contractor, stipulating the Commencement Date which shall not be later than 7 days after the date of the Notice to Proceed as per (aa) below.
- (j) "Commissioning" means operation of the Facilities or any part thereof by the Contractor, which operation is to be carried out by the Contractor as provided in GCC Sub clause 25.1 (Commissioning) hereof, for the purpose of carrying out Trial-run for specified period mentioned in GCC Clause 25 during the said operation.

- (k) "Completion" means that the Facilities (or a specific part thereof where specific parts, if any, are specified in the SCC) have been completed operationally and structurally and put in a tight and clean condition, that all work in respect of Precommissioning of the Facilities or such specific part thereof has been completed, and Commissioning followed by Trial-run and Operational Acceptance, if applicable pursuant to GCC Clause 25, has been completed, as provided in GCC Clause 25.
- (l) "Conciliator" means the person or persons appointed or to be appointed for Conciliation to bring about settlement of any dispute or difference between the Employer and the Contractor referred to him or her by the Parties pursuant to GCC Clause 45 hereof.
- (m) "day" means calendar day, unless otherwise specified as "Business Day". A Business Day is any day that is an official working day of Employer and excludes official public holidays.
- (n) "Defect Liability Period" means the period of validity of the warranties given by the Contractor commencing at Completion of the Facilities or a part thereof, during which the Contractor is responsible for defects with respect to the Facilities (or the relevant part thereof) as provided in GCC Clause 27 (Defect Liability) hereof.
- (o) "Drawings" means the drawings of or in connection with the Facilities/ Works included in the Contract, and any additional and modified drawings issued by (or on behalf of) the Employer/ Project Manager in accordance with the Contract.
- (p) "Employer" means the person named as such in the SCC and includes the legal successors or permitted assigns of the Employer.
- (q) "Employer's Personnel" means the Project Manager, the Project Manager's Representative (if appointed), assistants to whom delegation is made by the Project Manager as per the Contract and all other staff, labour and other employees of the Project Manager and of the Employer engaged in fulfilling the Employer's obligations under the Contract; and any other personnel identified as Employer's Personnel, by a Notice from the Employer to the Contractor.
- (r) "Eligible Country" means the countries and territories eligible under the rules of the Government, as well as other such countries, if any, as further elaborated in the SCC.
- (s) "Effective Date" means the date of fulfilment of all conditions stated in Article 4 (Effective Date) of the Contract Agreement, upon which the period until the Time for Completion shall be counted from.
- (t) "Facilities", means the Plant to be supplied and installed, as well as all the Installation Services and other services to be carried out by the Contractor under the Contract.
- (u) "GCC" means the General Conditions of Contract.
- (v) "Government" means the government of India, State Government or Local Government as applicable.
- (w) "Governmental Authority" means any national, state, provincial, local or similar government, governmental, regulatory or administrative authority, branch, agency, any statutory body or commission or any non-governmental regulatory or administrative authority, body or other organization to the extent that the rules, regulations and standards, requirements, procedures or Orders of

such authority, body or other organization have the force of Applicable Law or any court, tribunal, arbitral or judicial body, or any stock exchange of the India or any other country.

- (x) "Guarantee Test(s)" means the test(s) specified in the Employer's Requirements to be carried out to ascertain whether the Facilities or a specified part thereof is able to attain the Functional Guarantees specified in the Appendix (Functional Guarantees) to the Contract Agreement in accordance with the provisions of GCC Sub clause 25 hereof.
- (y) "Installation Services" means all those services ancillary to the supply of the Plant for the Facilities, to be provided by the Contractor under the Contract, such as transportation and provision of marine or other similar insurance, inspection, expediting, site preparation and civil works (including the provision and use of Contractor's Equipment and the supply of all construction materials required), installation, testing, pre-commissioning, commissioning, operations, maintenance, the provision of operations and maintenance manuals, training, etc. as the case may require.
- (z) "month" means calendar month.
- (aa) "Notice to Proceed" means a notice given by the Employer to the Contractor to proceed with execution of the Works/ work on the Facilities stipulating therein the Commencement Date, as provided in GCC Clause 8 (Commencement and Time for Completion) hereof.
- (bb) "Operational Acceptance" means the acceptance by the Employer of the Facilities (or any part of the Facilities where the Contract provides for acceptance of the Facilities in parts), which certifies the Contractor's fulfilment of the Contract in respect of Functional Guarantees of the Facilities (or the relevant part thereof) in accordance with the provisions of GCC Clause 28 (Functional Guarantees) hereof and shall include deemed acceptance in accordance with GCC Clause 25 (Operational Acceptance) hereof.
- (cc) "Party" means the Employer or the Contractor, as the context requires and "Parties" mean both the Employer and the Contractor.
- (dd) "Plant" means permanent plant, equipment, machinery, apparatus, articles and things of all kinds to be provided and incorporated in the Facilities by the Contractor under the Contract (including the spare parts to be supplied by the Contractor under GCC Sub clause 7.3 hereof), but does not include Contractor's Equipment.
- (ee) "Pre-commissioning" means the testing, checking and other requirements specified in the Employer's Requirements that are to be carried out by the Contractor in preparation for Commissioning as provided in GCC Clause 24 hereof.
- (ff) "Project Manager" or 'Project Management Consultant (PMC)' (alternatively referred to as the "Engineer-in-Charge" or "Engineer" or "Owner's Engineer) means the person or firm appointed by or hired or engaged (or is proposed to be hired or engaged) by the Employer for the Contract implementation in the manner provided in GCC sub clause 17.1 hereof and named as such, to perform the duties delegated by the Employer including supervising the work being performed by the Contractor and administering the Contract.
- (gg) "SCC" means the Special Conditions of Contract.
- (hh) "Site" means the land and other places upon which the Facilities

are to be installed, and such other land or places as may be specified in the Contract as forming part of the Site. The Site location including the country where the Site is located is mentioned in the SCC.

- (ii) "Specifications" means the technical specifications of or in regard to or in respect of the Facilities/ Works included in the Contract, and any additional and modified technical specification issued by (or on behalf of) the Employer/ Project Manager in accordance with the Contract.
- (jj) "Subcontractor," including manufacturers, means any person to whom execution of any part of the Facilities, including preparation of any design or supply of any Plant, is sub-contracted directly or indirectly by the Contractor, and includes its legal successors or permitted assigns
- (kk) "Time for Completion" means the time within which Completion of the Facilities as a whole (or of a part of the Facilities where a separate Time for Completion of such part has been prescribed) is to be attained, as referred to in GCC Clause 8 and in accordance with the relevant provisions of the Contract.
- (ll) "week" means continuous period of seven (7) days.
- (mm) "Works" shall mean the work on the Facilities as per Contract.
- (nn) "year" means 365 days.

2. Contract Documents

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

3. Interpretation

- 3.1 In the Contract, except where the context requires otherwise,
- (a) words indicating one gender include all genders;
 - (b) words indicating the singular also include the plural and words indicating the plural also include the singular;
 - (c) provisions including the word "agree," "agreed," or "agreement" require the agreement to be record in writing;
 - (d) the word 'approved' means approved in writing, including subsequent written confirmation of previous verbal approval and 'approval' means approval in writing, including as aforesaid;
 - (e) the word "tender" is synonymous with "bid," "tenderer" with "Bidder," and "tender documents" with "Bidding Documents";
 - (f) "written" or "in writing" means handwritten, typewritten, printed or electronically made, and resulting in a permanent record;
 - (g) "person" means a natural person, any form of business organization, incorporated or not, or any other legal entity, including but not limited to a company, a corporation, limited liability partnership, partnership, or proprietorship organization;
 - (h) "Joint Venture (JV)" means an association with or without a legal personality distinct from that of its members, of more than one entity/ firm where one member has the authority to conduct all business for and on behalf of any and all the members/ partners of the JV, and where the members/ partners of the JV are jointly and

severally liable to Employer for the performance of the Contract;

(i) “material (s)” wherever appearing, shall also mean and include things of all kinds other than Plant, whether on the Site or otherwise allocated to the Contract and intended to form or forming part of the Installation Services/ Works, including the supply-only materials (if any) to be supplied by the Contractor under the Contract;

(j) “store” wherever appearing, means the place where the Plant and materials supplied under this Contract are stored by the Contractor preferably near to the Site. Such place will be treated as forming part of Site;

(k) the marginal words and other headings shall not be taken into consideration in the interpretation of these Conditions;

(l) wherever there is reference to ‘ Facilities or a part thereof ‘ in the Contract, ‘ part thereof ‘ shall mean and imply such part as may be specified under the Contract in accordance with the GCC sub clause 8.3 SCC; and

(m) wherever it is mentioned in the Contract that the Contractor shall perform certain work or provide certain facilities or services, it is understood that the Contractor shall do so at his cost and the Contract Price shall be deemed to have included the cost of such performances and provisions so mentioned.

3.2 Incoterms

Unless inconsistent with any provision of the Contract, the meaning of any trade term and the rights and obligations of parties thereunder shall be as prescribed by Incoterms.

“Incoterms” means international rules for interpreting trade terms published by the International Chamber of Commerce (latest edition), 38 Cours Albert 1^{er}, 75008 Paris, France.

3.3 Entire Agreement

Subject to GCC Subclause 16.4 hereof, the Contract constitutes the entire agreement between the Employer and Contractor with respect to the subject matter of Contract and supersedes all communications, negotiations, and agreements (whether written or oral) of parties with respect thereto made prior to the date of Contract.

3.4 Amendment

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

3.5 Independent Contractor

The Contractor shall be an independent contractor performing the Contract. The Contract does not create any agency, partnership, joint venture, or other joint relationship between the parties hereto. Subject to the provisions of the Contract, the Contractor shall be solely responsible for the manner in which the Contract is performed. All employees, representatives, or Subcontractors engaged by the Contractor in connection with the performance of the Contract shall be under the complete control of the Contractor and shall not be deemed to be employees of the Employer, and nothing contained in the Contract or in any subcontract awarded by the Contractor shall be

construed to create any contractual relationship between any such employees, representatives, or Subcontractors and the Employer.

3.6 Non-Waiver

3.6.1 Subject to GCC Sub clause 3.6.2 below, no relaxation, forbearance, delay, or indulgence by either party in enforcing any of the terms and conditions of the Contract or the granting of time by either party to the other shall prejudice, affect, or restrict the rights of that party under the Contract, nor shall any waiver by either party of any breach of Contract operate as waiver of any subsequent or continuing breach of Contract.

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

3.7 Severability

If any provision or condition of the Contract is prohibited or rendered invalid or unenforceable, such prohibition, invalidity, or unenforceability shall not affect the validity or enforceability of any other provisions and conditions of the Contract.

3.8 Country of Origin

"Origin" for the purpose of Country of Origin, in respect of supply of Plant and Installation Services under the Contract, means the place where the plant and component parts thereof are mined, grown, produced, or manufactured, and from which the services are provided. Plant components are produced when, through manufacturing, processing, or substantial or major assembling of components, a commercially recognized product results that is substantially in its basic characteristics or in purpose or utility from its components.

The Plant and the Installation Services to be supplied by the Contractor for Completion of the Facilities under the Contract, must comply with the requirements specified in **SCC** in respect of the Country of Origin.

3.9 Sufficiency of Contract Price:

The Contractor shall be deemed to have satisfied himself as to the correctness of the rates, prices stated in the Contract, all of which shall, except in so far as it is otherwise provided in the Contract, cover all Contractor's obligations under the Contract and all matters and things necessary for the proper execution of the Works and Completion of the Facilities and remedying of any defects therein.

3.10 Survival

Any provision of this Contract that by their content are intended to survive the performance, termination, expiration or cancellation of this Contract shall so survive.

4. Communications

4.1 Wherever these Conditions provide for the giving or issuing of approvals, certificates, consents, determinations, notices, requests, and discharges, these communications shall be

- (a) in writing in the language specified in GCC sub clause 5.2 or 5.3 and delivered against receipt or proof of receipt; and
- (b) delivered, sent, or transmitted by personal delivery, post or

email to the address for the recipient's communications as stated in the SCC or any substitute address, email address or department or officer as the Party may notify to each other by not less than 7 (seven) days' notice.

When a certificate is issued to a Party, the certifier shall send a copy to the other Party. When a notice is issued to a Party, by the other Party or the Project Manager, a copy shall be sent to the Project Manager or the other Party, as the case may be.

4.2 All communications by the Contractor in respect of the Contract shall be addressed to the Project Manager with a copy to the Employer. All communication by the Employer or the Project Manager shall be addressed to the Contractor's Representative appointed for the Contract. Any verbal instruction given by the Employer/ Project Manager shall be considered valid only if the same is confirmed in writing within 3 (three) days of giving of the verbal instruction. Any such notice or other written communication shall be deemed to have been served:

- a. If delivered personally, at the time of delivery;
- b. If sent by registered letter when the registered letter would, in the ordinary course of post, be delivered whether actually delivered or not;
- c. If sent by courier service, (a) 2 (two) Business Days after deposit with an overnight courier if for inland delivery and (b) 5 (five) Business Days after deposit with an international courier if for overseas delivery; and
- d. If sent by e-mail, when it is sent, provided the sender does not receive an "undeliverable" message (if sent during business hours) or (if not sent during business hours) at the beginning of business hours next following the time of sending of the electronic mail.

5. Law and Language

- 5.1 The Contract shall be governed by and interpreted in accordance with laws of the country specified in the SCC and the courts of Jurisdiction shall be as specified in SCC.
- 5.2 The ruling language of the Contract shall be that stated in the SCC.
- 5.3 The language for communications shall be the ruling language unless otherwise stated in the SCC.

6. Fraud and Corruption

- 6.1 The Employer and its personnel, as well as firms and individuals participating in procurement activities, including but not limited to, Bidders, Suppliers, and Contractors, agents, subcontractors, Sub consultants, service providers, sub suppliers, manufacturers (including their respective officers, directors, employees and personnel) under the contracts where the Employer is a party, are obliged to and shall observe the highest standard of ethics during the procurement and execution of such contracts. In pursuance of this, the Employer
 - (a) defines, for the purposes of this provision, the terms set forth below as follows:
 - (i) "corrupt practice" means the offering, giving, receiving, or soliciting, directly or indirectly, anything of value to influence improperly the actions of another party;
 - (ii) "fraudulent practice" means any act or omission, including a misrepresentation, that knowingly or recklessly misleads,

- or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;
- (iii) “coercive practice” means impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;
 - (iv) “collusive practice” means an arrangement between two or more parties designed to achieve an improper purpose, including influencing improperly the actions of another party;
 - (v) “abuse” means theft, waste, or improper use of assets related to the Financer-related activity, either committed intentionally or through reckless disregard;
 - (vi) “conflict of interest” means any situation in which a party has interests that could improperly influence that party’s performance of official duties or responsibilities, contractual obligations, or compliance with applicable laws and regulations; and
 - (vii) “integrity violation” is any violation of integrity principles and guidelines (as amended from time to time), under the Employer’s Anticorruption Policy including failure to adhere to the highest ethical standard.
- (b) will reject a proposal for award if it determines that the Bidder recommended for award or any of its officers, directors, employees, personnel, sub consultants, subcontractors, service providers, suppliers or manufacturers has, directly or through an agent, engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices or other integrity violations in competing for the Contract;
 - (c) will impose remedial actions on a firm or an individual, at any time, in accordance with the Employer’s Anticorruption Policy, including sanctions, ban, debarment or declaring ineligible, either indefinitely or for a stated period of time, to participate¹ in the Employer, -administered, or -supported procurement activities or to benefit from a Employer -administered, or -supported contract, financially or otherwise, if it at any time determines that the firm or individual has, directly or through an agent, engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices or other integrity violations. in connection with the procurement process, selection and/or execution of a contract.
- 6.2 All Bidders, consultants, contractors, suppliers, manufacturers, service providers, and other third parties engaged or involved in the procurement-related activities and their respective officers, directors, employees and personnel, are obliged to cooperate fully in any investigation by Authorities legally authorized to do so.
- 6.3 All Bidders, consultants, contractors and suppliers shall require their officers, directors, employees, personnel, agents to ensure that, in its contract with its sub-consultants, subcontractors, and other third parties engaged or involved in the Employer -related activities, such sub-consultants, subcontractors, and other third parties similarly are obliged to cooperate fully in any investigation by Authorities when

required to do so.

6.4 The Contractor undertakes that no fees, gratuities, rebates, gifts, commissions or other payments have been given or received in connection with the procurement process or in the contract execution.

6.5 Additional provisions in regard to Fraud and Corruption, if any, specified in SCC shall also apply.

B. Subject Matter of Contract

7. Scope of Facilities

7.1 Unless otherwise expressly limited in the Employer's Requirements, the Contractor's obligations cover the provision of all Plant and the performance of all Installation Services required for the design, the manufacture, procurement, quality assurance, construction, installation, associated civil works, pre-commissioning and delivery of the Plant and the installation, Completion consequent upon commissioning & trial-run, performance testing and operational acceptance, if applicable, of the Facilities in accordance with the plans, procedures, specifications, drawings, codes, and any other documents as specified in the Contract. Such specifications include, but are not limited to, the provision of supervision and engineering services; the supply of labor, materials, equipment, spare parts (as specified in GCC Sub clause 7.3 below) and accessories; Contractor's Equipment; construction utilities and supplies; temporary materials, structures, and facilities; transportation (including, without limitation, unloading and hauling to, from and at the Site); and storage, except for those supplies, works, and services that will be provided or performed by the Employer, as set forth in the Appendix (Scope of Works and Supply by the Employer) to the Contract Agreement.

7.2 The Contractor shall, unless specifically excluded in the Contract, perform all such work and/or supply all such items and materials not specifically mentioned in the Contract but that can be reasonably inferred from the Contract as being required for attaining Completion of the Facilities as if such work and/or items and materials were expressly mentioned in the Contract.

7.3 In addition to the supply of Mandatory Spare Parts included in the Contract, the Contractor agrees to supply spare parts required for the operation and maintenance of the Facilities for the period specified in the SCC and as per the provisions, if any, specified in the SCC. However, the identity, specifications, and quantities of such spare parts and the terms and conditions relating to the supply thereof are to be agreed between the Employer and the Contractor, and based on the price of such spare parts given in Price Schedule No. 4, The price of such spare parts shall include the purchase price there for and other costs and expenses (including the Contractor's fees) relating to the supply of spare parts.

8. Commencement and Time for Completion

8.1 The Contractor shall commence work on the Facilities or of a part where a separate time for Completion of such part is specified in the Contract, as stipulated in the Notice to Proceed issued by the Employer to the Contractor. The Commencement Date shall be reckoned accordingly, and shall not be later than 7 days after the date of the Notice to Proceed except as otherwise provided otherwise in Article 4 of the Contract Agreement.

8.2 Without prejudice to GCC sub clause 26.2 hereof, the Contractor shall

thereafter proceed with the work on the Facilities or of a part where a separate Commencement Date for such part is specified in the Notice to Proceed.

8.3 The Time for Completion of the Facilities or of a part where a separate Time for Completion of such part is specified, under the Contract, shall be in accordance with the SCC. The Contractor shall attain Completion of the Facilities or of a part where a separate Time for Completion of such part is specified in the Contract, within the Time for Completion stated in the SCC or within such extended time to which the Contractor shall be entitled under GCC Clause 40 hereof.

8.4 The Contract Price is based on the above. Unless otherwise specified in SCC, no credit, incentive or bonus will be given if Completion is achieved before the specified Time for Completion of the Facilities or part thereof.

9. Contractor's Responsibilities

9.1 The Contractor

- a. shall design, manufacture, including associated purchases and/or subcontracting, install, and complete the Facilities in accordance with the Contract, including providing training to the Employer's Personnel if and as specified in Employer's Requirements, and when completed, the Facilities should be fit for the purposes for which they are intended as defined in the Contract;
- b. shall provide the spares, goods, materials, equipment and the documents, details and information as may be specified in the Employer's Requirements and elsewhere in the Contract, and all Contractor's Personnel, consumables and other things and services, whether of a temporary or permanent nature, required to fulfil the Contractor's obligations under the Contract;
- c. shall be responsible for the adequacy, stability and safety of all the Contractor's operations and activities, of all methods of construction and of the Works except to the extent specified in the Contract;
- d. shall ensure safe keeping and diligent use of the documents connected with the Works so far as the documents relate to the Contractor. It is the responsibility of the Contractor to safe keep and submit on demand to the Employer or any other Authority all the approvals, permits, licenses, certificates and other relevant document generated for the Works;
- e. shall not use Employer's name, trademark, or service mark in any advertising, written sales promotion, press releases, and/or other publicity matters relating to this Contract without Employer's prior written approval, to be given by the Employer at its sole discretion;
- f. hereby undertakes to assist and co-operate with the Employer, Employer's Personnel and the Project Manager in completion of any formalities for change / variations in Facilities or part thereof, any modification/ waiver and take all actions as may be required for such purposes including but not limited to execution of any documentation as may be required by the Employer in connection with or related to the Contract; and
- g. agrees and hereby irrevocably waives its right to object to execution of any document that would be required for meeting/ achieving the intended purposes under the Contract.

9.2 The Contractor confirms that it has entered into this Contract on the basis of a proper examination of the data relating to the Facilities, including any data as to boring tests provided by the Employer, and on

the basis of information that the Contractor could have obtained from a visual inspection of the Site if access thereto was available and of other data readily available to it relating to the Facilities as of the date 7 days prior to bid submission. The Contractor acknowledges that any failure to acquaint itself with all such data and information shall not relieve its responsibility for properly estimating the difficulty or cost of successfully performing the Facilities.

- 9.3 The Contractor shall be responsible for interpreting all data referred to under GCC sub clause 10.1. Further, to the extent which was practicable (taking account of cost and time), the Contractor shall be deemed to have obtained all necessary information as to risks, contingencies and other circumstances which may influence or affect its responsibilities and obligations under the Contract and in connection with or related to execution of the Works. To the same extent, the Contractor shall be deemed to have inspected and examined the Site, access to the Site, its surroundings, the above data and other available information, and to have been satisfied as to all matters relevant to the execution of the works for the Facilities, including:
- a. the form and nature of the Site, including sub-surface conditions;
 - b. the hydrological and climatic conditions, and the effects of climatic conditions at the Site;
 - c. the extent and nature of the goods, equipment, materials, services etc. necessary for the Works;
 - d. the laws, procedures and labour practices of India; and
 - e. the Contractor's requirements for access, accommodation, facilities, personnel, power, transport, water and any other utilities or services.
- 9.4 The Contractor shall acquire and pay for all permits, approvals, and/or licenses from all local, state, or national government authorities or public service undertakings in the country where the Site is located, which such authorities or undertakings require the Contractor to obtain in its name and which are necessary for the performance of the Contract, including, without limitation, visas for the Contractor's and Subcontractor's personnel and entry permits for all imported Contractor's Equipment. The Contractor shall acquire all other permits, approvals, and/or licenses that are not the responsibility of the Employer under GCC sub clause 10.3 hereof and that are necessary for the performance of the Contract.
- 9.5 The Contractor shall comply with the instructions of the Employer/ Project Manager issued from time to time under the Contract and with all laws in force in India. The laws will include all local, state, national, or other laws that affect the performance of the Contract and bind upon the Contractor. The Contractor shall indemnify and hold harmless the Employer from and against any and all liabilities, damages, claims, fines, penalties, and expenses of whatever nature arising or resulting from the violation of such laws by the Contractor or its personnel, including the Subcontractors and their personnel, but without prejudice to GCC Sub clause 10.1 hereof.
- 9.6 Any plant and services that will be incorporated in or be required for the Facilities and other supplies shall have their origin in the country(ies) and fully comply with the requirements as specified under GCC Clause 1 (Eligible Country). Any Subcontractors retained by the Contractor shall be from a country and fully comply with the

requirement specified under GCC Clause 1 (Eligible Country).

- 9.7 If the Contractor is a joint venture (JV), the names of the members/ partners of the JV, who are jointly and severally liable to Employer for the performance of the Contract, and the name of the member/ partner (referred to as the Lead Partner/ Member or the Partner in-charge) with the authority to conduct all business for and on behalf of any and all the members/ partners of the JV and to bind the joint venture or consortium basis the power of attorney to that effect furnished/ to be furnished by the Contractor, are mentioned in SCC. The composition or the constitution of the joint venture or consortium shall not be altered without the prior consent of the Employer.

9.8 Protection of the Environment

- (a) The Contractor shall take all reasonable steps to protect the environment (both on and off the Site) and to limit damage and nuisance to people and property resulting from pollution, noise, and other results of his operations.
- (b) The Contractor shall ensure that emissions, surface discharges, and effluent from the Contractor's activities shall not exceed the values stated in the Specification or prescribed by applicable Laws.

9.9 As-Built Records:

If no as-built records to be prepared by the Contractor are stated in the Employer's Requirements or elsewhere in the Contract, this Sub-Clause shall not apply.

The Contractor shall prepare, and keep up-to-date, a complete set of "as-built" records of the execution of the Works and the Facilities, showing the exact as-built locations, sizes and details of the work as executed by the Contractor and the Facilities. The format, referencing system, system of electronic storage and other relevant details of the as-built records shall be as stated in the Employer's Requirements or elsewhere in the Contract (if not stated, as acceptable to the Employer). These records shall be kept on the Site or such other place as may be mutually agreed by the Parties and shall be used exclusively for the purposes of this Sub-Clause.

The as-built records shall be submitted to the Project Manager for review, and the Facilities shall not be considered to be completed for the purposes of taking-over until the Project Manager has reviewed the same and given his no-objection.

The number of copies of as-built records to be submitted by the Contractor under this Sub-Clause shall be 3 (three) unless otherwise specified in Employer's Requirements.

9.10 Operation and Maintenance Manuals

If no operation and maintenance manuals to be prepared by the Contractor are stated in the Employer's Requirements or elsewhere in the Contract, this Sub-Clause shall not apply.

The Contractor shall prepare, and keep up-to-date, the operation and maintenance manuals in the format and other relevant details as stated in the Employer's Requirements or elsewhere in the Contract (if not stated, as acceptable to the Employer).

The operation and maintenance manuals for the Facilities shall be submitted to the Project Manager for review, and the Facilities shall

not be considered to be completed for the purposes of taking-over until the Project Manager has reviewed the same and given his no-objection shall be 3 (three) unless otherwise specified in Employer's Requirements

- 9.11 The Contractor's Responsibilities shall also include those, if any, specified in SCC.

10. Employer's Responsibilities

- 10.1 All information and/or data provided/ to be provided by the Employer as described in the SCC and/ or Employer's Requirements shall be deemed to be accurate, except when the Employer expressly states otherwise. All seismic, geological and other subsurface conditions or concealed conditions on the Site are the responsibility of the Employer. However, the Contractor is obliged to bring to the notice of the Employer in a timely manner, any errors or omissions in such information or ambiguities/ discrepancies therein.

The Employer shall be deemed to have and shall have made available to the Contractor for information, all relevant data in the Employer's possession on the topography of the Site and on sub-surface, hydrological, climatic and environmental conditions at the Site before submission of Bid by the Contractor. The Employer shall promptly make available to the Contractor all such data which comes into the Employer's possession after the submission of Bid by the Contractor.

- 10.2 The Employer shall be responsible for acquiring and providing legal and physical possession of the Site and reasonable access thereto, and for providing possession of and access to all other areas reasonably required for the proper execution of the Contract, including all requisite rights of way. The Employer shall accord all rights of access thereto.
- 10.3 The Employer shall acquire and pay for all permits, approvals, and/or licenses from all local, state, or national government authorities, or public service undertakings in the country where the Site is located which (a) such authorities or undertakings require the Employer to obtain in the Employer's name and (b) are necessary for the execution of the Contract, including those required for the performance by both the Contractor and the Employer of their respective obligations under the Contract. For all such permits, approvals, and/or licenses from all local, state, or national government authorities or public service undertakings in the country where the Site is located, the necessary interaction with the authorities concerned, follow up and expediting shall be done by the Contractor at his cost, The Employer shall, however, complete and sign the necessary documentation for the same as per statutory requirement with the assistance of the Contractor as may be required or requested by the Employer.
- 10.4 If requested by the Contractor, the Employer shall use its best endeavors to assist the Contractor in obtaining in a timely and expeditious manner all permits, approvals, and/or licenses necessary for the execution of the Contract from all local, state, or national government authorities, or public service undertakings that such authorities or undertakings require the Contractor or Subcontractors or the personnel of the Contractor or Subcontractors, as the case may be, to obtain.

- 10.5 Unless otherwise specified in the Contract or agreed upon by the Employer and the Contractor, the Employer shall provide sufficient, properly qualified operating and maintenance personnel; shall supply and make available raw materials, utilities, lubricants, chemicals, catalysts, other materials and facilities; and shall perform the work and services of whatsoever nature, including those required by the Contractor to properly carry out Pre-commissioning, Commissioning, and Guarantee Tests, if so provided in the Appendix (Scope of Works and Supply by the Employer) to the Contract Agreement, at or before the time specified in the program furnished by the Contractor under GCC Sub clause 18.2 hereof and in the manner thereupon specified or as otherwise agreed upon by the Employer and the Contractor.
- 10.6 The Employer shall be responsible for the continued operation of the Facilities after Completion, in accordance with GCC sub clause 25. All costs and expenses involved in the performance of the obligations under this GCC Clause 10 shall be the responsibility of the Employer, except as otherwise indicated and except those incurred by the Contractor with respect to the performance of Guarantee Tests, in accordance with GCC sub clause 25.
- 10.7 In the event that the Employer shall be in breach of any of his obligations imposed by the Contract, then the additional cost reasonably incurred by the Contractor in consequence thereof, as may be mutually agreed, shall be reimbursed to the Contractor against documentary evidence.
- 10.8 The Employer's Responsibilities shall also include those, if any, specified in SCC

C. Payment

11. Contract Price

- 11.1 The Contract Price shall be as specified in Article 2 (Contract Price and Terms of Payment) of the Contract Agreement.
- 11.2 Unless an adjustment clause is provided for in the in the Appendix (Price Adjustment) to the Contract Agreement, the Contract Price shall be a firm lump sum not subject to any alteration, except in the event of a Change in the Facilities or as otherwise provided in the Contract.
- 11.3 Subject to GCC sub clauses 9.2, 10.1, and 35 hereof, the Contractor shall be deemed to have satisfied itself as to the correctness and sufficiency of the Contract Price, which shall, except as otherwise provided for in the Contract, cover all its obligations under the Contract.

12. Terms of Payment

- 12.1 The Contract Price shall be paid as specified in Article 2 (Contract Price and Terms of Payment) of the Contract Agreement and in the Appendix (Terms and Procedures of Payment) to the Contract Agreement, which also outlines the procedures to be followed in making application for and processing payments.
- 12.2 No payment made by the Employer herein shall be deemed to constitute acceptance by the Employer of the Facilities or any part(s) thereof.

12.3 The Employer shall make all efforts for prompt payment with its respective due date or within the period set forth in the Contract.

12.4 The currency or currencies in which payments are made to the Contractor under this Contract shall be specified in the Appendix (Terms and Procedures of Payment) to the Contract Agreement, subject to the general principle that payments will be made in the currency or currencies in which the Contract Price has been stated in the Contract.

13. Securities

13.1 Issuance of Securities

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

13.2 Advance Payment Security

13.2.1 The Contractor shall, within 28 days of the Effective Date, provide a security in an amount equal to the advance payment increased by the percentage equal to the interest rate applicable thereon as specified and calculated in accordance with the Appendix (Terms and Procedures of Payment) to the Contract Agreement, and in the same currency or currencies with a validity of up to the period specified in SCC beyond the date of Completion of the Facilities in accordance with GCC Clause 25.

13.2.2 The security shall be in the form provided in SCC or in another form acceptable to the Employer. The amount of the security shall be reduced in proportion to the value of the Facilities executed by and paid to the Contractor from time to time, and shall automatically become null and void when the full amount of the advance payment has been recovered by the Employer. The security shall be returned to the Contractor immediately after its expiration.

13.3 Performance Security

13.3.1 The Contractor shall, within 28 days of the Effective Date, provide a security for the due performance of the Contract in the amount specified in the SCC.

13.3.2 The security shall be denominated in the currency or currencies of the Contract, or in a freely convertible currency acceptable to the Employer, and shall be in the form of bank guarantees provided in Section Contract Forms, or in any other forms, if any, specified by the Employer in the SCC.

13.3.3 Upon successful completion of the Defect Liability Period, the Security shall be reduced pro rata to the Contract Price of a part of the Facilities for which a separate Time for Completion is provided, and shall become null and void thereafter; provided, however, that if the Defects Liability Period has been extended on any part of the Facilities pursuant to GCC sub clause 27.8 hereof, the Contractor shall issue an additional security in an amount proportionate to the Contract Price of that part. The security shall be returned to the Contractor immediately after its expiration, provided, however, that if the Contractor, pursuant to GCC sub clause 27.10, is liable for an extended defect liability obligation, the performance security shall be extended for the period and up to the amount specified in the SCC.

13.3.4 In additions to the Performance Security as per forgoing clauses, the provisions regarding Security Deposit towards Performance Security shall also be applicable if so specified in **SCC**.

13.4 Besides the securities as specified in GCC Clause 13.2 and 13.3 above, the Contractor shall provide additional securities, if any specified in **SCC**.

13.5 The Contractor shall ensure that the Performance Security remains valid and enforceable till 3 months beyond successful completion of the Defect Liability Period and the Contractor has completed all its obligations under the Contract.

13.6 The Employer shall be entitled to make a claim under the Performance Security under the Contract in the event of any default or breach of Contract by the Contractor and including but not limited to the following:

- (a) Failure by the Contractor to extend the validity of the Performance Security, required as per the Contract.
- (b) Failure by the Contractor to pay the Employer the amount due to the Employer under the Contract including any arbitral award.
- (c) Failure by the Contractor to remedy a default during the Defect Liability Period as may be extended as per the Contract.
- (d) Circumstances which entitle the Employer to terminate the Contract for Contractor's Default, irrespective of whether a Notice of termination has been given.
- (e) If for remedying of defective work off Site the Contractor removes any defective or damaged Plant from the Site, failure by the Contractor to repair such Plant, return it to the Site, reinstall it and retest it by the date of expiry of the relevant duration or other date agreed by the Employer.
- (f) Failure of any compensation or other sums of money payable by the Contractor to the Employer under the terms of the Contract or on any other account, whatsoever.

Further, in the event of the Contractor's Performance Security being reduced by reasons of such claims/ deductions, as aforesaid, the Contractor shall, within 14 days of receipt of notice of demand from the Engineer-in-Charge, make good the deficit in Performance Security(ies).

14. Taxes and Duties

14.1 Except as otherwise specifically provided in the Contract, the Contractor shall bear and pay all taxes, duties, levies, and charges applicable on the plant, services or materials etc. and/or assessed on the Contractor, its Subcontractors, or their employees by all municipal, state, or national government authorities, in connection with the Facilities in and outside of India. The Contractor shall be solely responsible for the taxes that may be levied on the Contractor's and Subcontractor's persons or on earnings of any of his employees and shall hold the Employer indemnified and harmless against any claims that may be made against the Employer. The Employer does not take any responsibility whatsoever regarding taxes under Indian Income Tax Act, for the Contractor/ Subcontractor or his personnel. If it is obligatory under the provisions of the Indian Income Tax Act, deduction of Income

Tax at source shall be made by the Employer.

- 14.2 Notwithstanding GCC sub clause 14.1 above, the Employer shall bear and pay/ reimburse to the Contractor at actuals subject to other provisions of the Contract,
- (i) Goods and Service Tax (GST) payable in India on direct transactions between Employer and the Contractor, on the Plant specified in Price Schedule No. 1 and that are to be incorporated into the Facilities;
 - (ii) Goods and Service Tax (GST) payable in India on direct transactions between Employer and the Contractor, on the Installation and Other Services specified in Price Schedule No. 2 and that are to be provided by the Contractor for the Facilities;
- 14.3 If any tax exemptions, reductions, allowances, or privileges may be available to the Contractor in India the Employer shall use its best endeavors to enable the Contractor to benefit from any such tax savings to the maximum allowable extent.
- 14.4 The Contractor shall be responsible for payment of all the royalties and levies on any mineral extraction and/ or utilization, as per the Government regulations and provision of the Contract, including for coarse and fine aggregates, stones, boulders, earth and clay, etc. used for the Works. Such royalties and levies shall be treated and deemed as "Tax" for the purpose of GCC clause 14.5.
- 14.5 For the purpose of the Contract, it is agreed that the Contract Price specified in Article 2 (Contract Price and Terms of Payment) of the Contract Agreement is based on the taxes, duties, levies, and charges prevailing at the date 7 (seven) days prior to the date of bid submission in the India (hereinafter called "Tax" in this GCC sub clause 14.4). If any rates of Tax are increased or decreased, a new Tax is introduced, an existing Tax is abolished, or any change in interpretation or application of any Tax occurs in the course of the performance of Contract, which was or will be assessed on the Contractor, or their Subcontractors in connection with performance of the Contract, but limited to the Tax imposed on Plant and Installation and Other Services, an equitable adjustment of the Contract Price shall be made to fully take into account any such change by addition to the Contract Price or deduction therefrom, as the case may be, in accordance with GCC Clause 36 hereof.

D. Intellectual Property

15. License/Use of Technical Information

- 15.1 For the operation and maintenance of the Plant, the Contractor hereby grants a non-exclusive and nontransferable license (without the right to sublicense) to the Employer under the patents, utility models, or other industrial property rights owned by the Contractor or by a third party from whom the Contractor has received the right to grant licenses thereunder, and shall also grant to the Employer a nonexclusive and nontransferable right (without the right to sublicense) to use the know-how and other technical information disclosed to the Employer under the Contract. Nothing contained herein shall be construed as transferring ownership of any patent, utility model, trademark, design, copyright, know-how, or other intellectual property right from the Contractor or any third party to

the Employer.

- 15.2 The copyright in all drawings, documents, and other materials containing data and information furnished to the Employer by the Contractor herein shall remain vested in the Contractor or, if they are furnished to the Employer directly or through the Contractor by any third party, including suppliers of materials, the copyright in such materials shall remain vested in such third party. The Employer shall however be free to reproduce all drawings, documents and other material furnished to the Employer for the purpose of the Contract including, if required, for operation and maintenance.

16. Confidential Information

- 16.1 The Employer and the Contractor shall keep confidential and shall not, without the written consent of the other party hereto, divulge to any third party any documents, data or other information furnished directly or indirectly by the other party hereto in connection with the Contract, whether such information has been furnished prior to, during, or following termination of the Contract. Notwithstanding the above, the Contractor may furnish to its Subcontractor(s) such documents, data, and other information it receives from the Employer to the extent required for the Subcontractor(s) to perform its work under the Contract, in which event the Contractor shall obtain from such Subcontractor(s) an undertaking of confidentiality similar to that imposed on the Contractor under this GCC Clause 16.
- 16.2 The Employer shall not use such documents, data, and other information received from the Contractor for any purpose other than the operation and maintenance of the Facilities including procurement of spares. Similarly, the Contractor shall not use such documents, data, and other information received from the Employer for any purpose other than the design, procurement of Plant, construction, or such other work and services as are required for the performance of the Contract.
- 16.3 The obligation of a party under GCC sub clauses 16.1 and 16.2 above, however, shall not apply to that information, which
- (a) now or hereafter enters the public domain through no fault of that party;
 - (b) can be proven to have been possessed by that party at the time of disclosure and which was not previously obtained, directly or indirectly, from the other party hereto; and
 - (c) otherwise lawfully becomes available to that party from a third party that has no obligation of confidentiality.
- 16.4 The above provisions of this GCC Clause 16 shall not in any way modify any undertaking of confidentiality given by either of the parties hereto prior to the date of the Contract in respect of the Facilities or any part thereof.
- 16.5 The provisions of this GCC Clause 16 shall survive termination, for whatever reason, of the Contract.

E. Execution of the Facilities

17. Representatives 17.1 Project Manager (also referred to as 'Project Management Consultant (PMC)' where PMC has been engaged by the Employer)

If the Project Manager (or, if a legal entity, the natural person appointed to act on its behalf) is not named in the Contract in SCC, then within 14 days of the Effective Date, the Employer shall appoint and notify the Contractor in writing of the name of the Project Manager. The Employer may from time to time appoint some other person or firm, as the case may be, as the Project Manager in place of the person or firm, as the case may be, previously so appointed, and shall give notice of the name of such other person or firm, as the case may be, to the Contractor without delay. No such appointment shall be made at such a time or in such a manner as to impede the progress of work on the Facilities. Such appointment shall only take effect upon receipt of such notice by the Contractor. Except as otherwise stated in the Contract, and as may be mentioned in SCC the Project Manager shall represent and act for the Employer at all times during the performance of the Contract and all notices, instructions, information, and other communications given by the Contractor to the Employer under the Contract shall be given to the Project Manager.

17.2 Contractor's Representative and Construction Manager

17.2.1 If the Contractor's Representative is not named in the Contract in SCC, then within 14 days of the Effective Date, the Contractor shall appoint the Contractor's Representative and shall request the Employer in writing to approve the person so appointed. If the Employer makes no objection to the appointment within 14 days, the Contractor's Representative shall be deemed to have been approved. If the Employer objects to the appointment within 14 days giving the reason therefor, then the Contractor shall appoint a replacement within 14 days of such objection, and the foregoing provisions of this GCC sub clause 17.2.1 shall apply thereto.

17.2.2 The Contractor's Representative shall represent and act for the Contractor at all times during the performance of the Contract and shall give to the Project Manager all the Contractor's notices, instructions, information, and all other communications under the Contract.

All notices, instructions, information, and all other communications given by the Employer or the Project Manager to the Contractor under the Contract shall be given to the Contractor's Representative or, in its absence, its deputy, except as herein otherwise provided.

The Contractor shall not revoke the appointment of the Contractor's Representative without the Employer's prior written consent, which shall not be unreasonably withheld. If the Employer consents thereto, the Contractor shall appoint some other person as the Contractor's Representative, pursuant to the procedure set out in GCC sub clause 17.2.1.

17.2.3 The Contractor's Representative may, subject to the approval of the Employer which shall not be unreasonably

withheld, at any time delegate to any person any of the powers, functions and authorities vested in him or her. Any such delegation may be revoked at any time. Any such delegation or revocation shall be subject to a prior notice signed by the Contractor's Representative, and shall specify the powers, functions, and authorities thereby delegated or revoked. No such delegation or revocation shall take effect unless and until a copy thereof has been delivered to the Employer and the Project Manager.

Any act or exercise by any person of powers, functions and authorities so delegated to him or her in accordance with this GCC sub clause 17.2.3 shall be deemed to be an act or exercise by the Contractor's Representative.

17.2.4 From the commencement of installation of the Facilities at the Site until Completion, the Contractor's Representative shall appoint a suitable person as the Construction Manager. The Construction Manager shall supervise all work done at the Site by the Contractor and shall be present at the Site throughout normal working hours except when on leave, sick, or absent for reasons connected with the proper performance of the Contract. Whenever the Construction Manager is absent from the Site, the Contractor's Representative or the Construction Manager shall appoint a suitable person to act as the Construction Manager's deputy.

17.2.5 The Employer may by notice to the Contractor object to any representative or person employed by the Contractor in the execution of the Contract who, in the reasonable opinion of the Employer, may behave inappropriately, may be incompetent or negligent, or may commit a serious breach of the Site regulations provided under GCC sub clause 22.4. The Employer shall provide evidence of the same, whereupon the Contractor shall remove such person from the Facilities.

17.2.6 If any representative or person employed by the Contractor is removed in accordance with GCC sub clause 17.2.5, the Contractor shall, where required, promptly appoint a replacement.

18. Work Program

18.1 Contractor's Organization

The Contractor shall supply to the Employer and the Project Manager a chart showing the proposed organization to be established by the Contractor for carrying out work on the Facilities within 21 days of the Effective Date. The chart shall include the identities of the key Contractor's Personnel, and the curricula vitae of such key personnel to be employed shall be supplied together with the chart for approval of the Employer. The Contractor shall promptly inform the Employer and the Project Manager in writing of any revision or alteration of such an organization chart for the Employer's approval.

If the Employer/ Project manager asks the Contractor to remove a person who is a member of the Contractor's staff or his work force by providing valid reasons, the Contractor shall ensure that the said person leaves the Site immediately and has no further connection with the Works in the Contract. Any person so removed from the Site shall be replaced at the earliest possible and preferably within 3

(three) days.

18.2 Program of Performance

The form of the program of performance of the Contract shall be in the form of the Critical Path Method (CPM), the PERT network, or other internationally used programs.

Within 28 days after the Effective Date, the Contractor shall submit to the Project Manager a detailed program of performance of the Contract, made in a form acceptable to the Project Manager and showing the sequence in which it proposes to design, manufacture, transport, assemble, install, and pre-commission the Facilities, as well as the date by which the Contractor reasonably requires that the Employer shall have fulfilled its obligations under the Contract so as to enable the Contractor to execute the Contract in accordance with the program and to achieve Completion consequent upon Commissioning, Trial-run and Acceptance of the Facilities in accordance with the Contract. The program so submitted by the Contractor shall accord with the Time Schedule included in the Appendix (Time Schedule) to the Contract Agreement and any other dates and periods specified in the Contract. The Contractor shall update and revise the program as and when appropriate or when required by the Project Manager, but without modification in the Time for Completion given in the GCC Clause 8 and any extension granted in accordance with GCC Clause 40, and shall submit all such revisions to the Project Manager. Upon approval by the Employer the program of performance by the Contractor, or any revision thereto, shall form part of the Contract. Further, the provisions, if any, specified in **SCC** shall also be applicable.

18.3 Progress Report

The Contractor shall monitor progress of all the activities specified in the program referred to in GCC sub clause 18.2 above, and supply a progress report to the Project Manager every month or such other earlier period as the Project manager may require..

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

(a) Detailed description of progress, including each stage of design, procurement, manufacture, delivery to Site, construction, installation, erection, testing and commissioning, as may be applicable ;

(b) Status of design documents, drawings. purchase orders, and other documentation;

(c) For the manufacture/ sourcing/ procurement of each main item of Plant and materials: name of manufacturer, factory location, percentage progress, actual date or expected dates of Contractor's inspections, testing and delivery;

(d) Records of structure/ sub system/ sub facility wise deployment/

mobilization of Contractor's Personnel and Construction Equipment on the Site including procurement/ purchase status of Contractor's Equipment wherever applicable;

(e) Details of insurance claims raised by the Contractor;

(f) Copies of quality assurance documents, inspection reports, test reports/ results and acceptance certificates of Plant and materials and Works;

(g) Safety statistics including details of any hazardous incidents and activities related to Site, health, social and environmental aspects and public relations;

(h) Comparisons of actual and planned progress, with details of any aspects or difficulties which may delay or jeopardize the Completion of the Facilities and the Works within the Time for Completion, and the measures being (or to be) taken to overcome such aspects and difficulties;

(i) Actions pending from the Employer or the Engineer-in-Charge which may delay the Works, including Drawings. The Contractor shall furnish details of Drawings including construction drawings required for each respective part of the Works at least 2 (two) months in advance of their requirement.

A format of the progress report shall be finalized by the Contractor with the approval of the Project Manager within 14 days from the Effective Date. The same can be further modified as the performance progresses.

18.4 Progress of Performance

If at any time the Contractor's actual progress falls behind the program referred to in GCC sub clause 18.2, or it becomes apparent that it will so fall behind, the Contractor shall, at the request of the Employer or the Project Manager, prepare and submit to the Project Manager a revised program, taking into account the prevailing circumstances, and shall notify the Project Manager of the steps being taken to expedite progress so as to attain Completion of the Facilities within the Time for Completion under GCC sub clause 8.2, any extension thereof entitled under GCC sub clause 40.1, or any extended period as may otherwise be agreed upon between the Employer and the Contractor.

The Contractor and the Employer/Project Manager shall each maintain registers (called the "**Hindrance Register**") at Site or such other place as the Project Manager may require, for reporting hindrances if any, while executing the Works in respect of design, engineering, procurement, supply, erection, installation and construction, etc.. The Contractor and the Employer/ Project Manager shall each record, in the respective Hindrance Register(s), details of any hindrances to satisfactory Completion of the Facilities/ Works within the Time for Completion and to bring to the notice of the other Party, within 7 (seven) days of identifying any such hindrance. The format of the Hindrance Registers shall be finalized with the approval of the Project Manager.

18.5 Procedures

The Contract shall be executed in accordance with the Contract Documents including the procedures, if any, given in the Employer's Requirements.

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

18.6 Management Meetings

A meeting (referred to as the "Management Meeting") shall be convened, invariably every month, by the Employer or the Project Manager to review the progress of the performance under the Contract and discuss the related issues. Either the Employer or the Project Manager and the Contractor, along with his planning engineer shall attend the Management Meeting without fail.

The Employer or the Project Manager will record the business of Management Meetings and will provide copies of the record to those attending the meeting. The responsibility of the Parties for actions to be taken will be decided by the Employer or the Project Manager, either at the Management Meeting or after the Management Meeting, and conveyed in writing to all who attended the Management Meeting.

In order to review the progress of the Works, the Contractor along with his planning engineer/ personnel shall attend the Management Meeting.

19.Subcontracting

- 19.1 Except where expressly specified in the Contract, the Contractor shall not subcontract whole or any part of Works without approval of the Employer. Any subcontracting shall not relieve the Contractor from any contractual obligations or responsibility under the Contract. The Appendix 5 (List of Major Items of Plant and Services and List of Approved Subcontractors) to the Contract Agreement specifies major items of plant and services, as identified in SCC, and a list of approved Subcontractors against each item, including manufacturers. Insofar as no Subcontractors are listed against any such major item, the Contractor shall prepare a list of Subcontractors for such item for inclusion in such list. The Contractor may from time to time propose any addition to or deletion from any such list. The Contractor shall submit any such list or any modification thereto to the Employer for its approval in sufficient time so as not to impede the progress of work on the Facilities. Such approval by the Employer for any of the Subcontractors shall not relieve the Contractor from any of its obligations, duties, or responsibilities under the Contract.
- 19.2 The Contractor shall select and employ its Subcontractors for such major items from those listed in the lists referred to in GCC sub clause 19.1.
- 19.3 For items or parts of the Facilities other than the major items of Plant and Services and for deployment of labor, the Contractor may employ such Subcontractors as it may select, at its discretion.
- 19.4 Each subcontract shall include provisions which would entitle the Employer to require the sub-contract to be assigned to the Employer under GCC 19.5 (if and when applicable), or in event of

termination by the Employer under GCC 42.2.

19.5 If a Sub-contractor's obligations extend beyond the expiry date of the relevant Defects Liability Period and the Project Manager, prior to that date, instructs the Contractor to assign the benefits of such obligations to the Employer, then the Contractor shall do so.

19.6 Additional provisions, if any specified in SCC, in regard to subcontracting, shall also apply

20. Design and Engineering

20.1 Specifications and Drawings

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

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

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

20.2 Codes and Standards

Wherever references are made in the Contract to codes and standards in accordance with which the Contract shall be executed, the edition or the revised version of such codes and standards current at the date 7 days prior to date of bid submission shall apply unless otherwise specified. During Contract execution, any changes in such codes and standards shall be applied subject to approval by the Employer and shall be treated in accordance with GCC Clause 39.

20.3 Approval/Review of Technical Documents by Project Manager

20.3.1 The Contractor shall prepare or cause its Subcontractors to prepare, and furnish to the Project Manager, along with the number of copies to be furnished, the documents listed in the Appendix (List of Documents for Approval or Review) to the Contract Agreement for its approval or review as specified and in accordance with the requirements of GCC sub clause 18.2 (Program of Performance).

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

GCC sub clauses 20.3.2 through 20.3.7 shall apply to those documents requiring the Project Manager's approval, but not to those furnished to the Project Manager for its review only.

20.3.2 Within 14 days after receipt by the Project Manager of any document requiring the Project Manager's approval in accordance with GCC sub clause 20.3.1, the Project Manager shall either return one copy thereof to the Contractor with its approval endorsed thereon or shall notify

the Contractor in writing of its disapproval thereof and the reasons therefor and the modifications that the Project Manager proposes.

20.3.3 The Project Manager shall not disapprove any document, except on the grounds that the document does not comply with the Contract or that it is contrary to good engineering practice. If the Project Manager disapproves a document, he shall specify the reasons for his decision.

20.3.4 If the Project Manager disapproves the document, the Contractor shall modify the document and resubmit it for the Project Manager's approval in accordance with GCC sub clause 20.3.2. If the Project Manager approves the document subject to modification(s), the Contractor shall make the required modification(s), whereupon the document shall be deemed to have been approved.

20.3.5 If any dispute or difference occurs between the Employer and the Contractor in connection with or arising out of the disapproval by the Project Manager of any document and/or any modification(s) thereto that cannot be settled between the parties within a reasonable period, then such dispute or difference may be referred for resolution in accordance with GCC Clause 45 hereof. If such dispute or difference is referred for resolution, the Project Manager shall give instructions as to whether and, if so, how, performance of the Contract is to proceed. The Contractor shall proceed with the Contract in accordance with the Project Manager's instructions, provided that if dispute resolution outcome upholds the Contractor's view on the dispute, then the Contractor shall be reimbursed by the Employer for any additional costs incurred by reason of such instructions and shall be relieved of such responsibility or liability in connection with the dispute and the execution of the outcome of resolution.

20.3.6 The Project Manager's approval, with or without modification of the document furnished by the Contractor, shall not relieve the Contractor of any responsibility or liability imposed upon it by any provisions of the Contract except to the extent that any subsequent failure results from modifications required by the Project Manager.

20.3.7 The Contractor shall not depart from any approved document unless the Contractor has first submitted to the Project Manager an amended document and obtained the Project Manager's approval thereof, pursuant to the provisions of this GCC sub clause 20.3.

If the Project Manager requests any change in any already approved document and/or in any document based thereon, the provisions of GCC Clause 39 shall apply to such request.

20.3.7 For the purpose of Approval/Review of Technical Documents by Project Manager under this GCC sub clause 20.3, Project Manager shall include mean and include any other person or firm (referred to as **Owner's Engineer or OE**), as the case may be, who has been authorized to do so by the Employer.

21. Procurement

21.1 Plant and Materials

Subject to GCC sub clause 14.2, the Contractor shall procure and transport all materials in an expeditious and orderly manner to the Site. The Contractor shall adequately record the condition of roads, agriculture land and other Infrastructure prior to the start of transporting Plant and materials, goods and equipment and Contractor's/ Construction Equipment.

The Contractor shall furnish from time-to-time proof and samples, at his cost, of the Plant and materials or goods as may be specified by the Employer for his approval before use in the Works.

The Project Manager shall have full powers for removal of any or all Plant and materials or goods brought to the Site by the Contractor, which are not in accordance with the Contract specifications or samples, approved by him.

In addition to the above, the provisions if any specified in **SCC** shall also apply.

21.2 Employer-Supplied Materials

If the Appendix (Scope of Works and Supply by the Employer) to the Contract Agreement provides that the Employer shall furnish any specific items to the Contractor for incorporation in the Facilities, the following provisions shall apply:

21.2.1 The Employer shall, at its own risk and expense, transport each item to the place on or near the Site as specified in Appendix (Scope of Works and Supply by the Employer) to the Contract Agreement and make such item available to the Contractor at the time specified in the program furnished by the Contractor, pursuant to GCC sub clause 18.2, unless otherwise mutually agreed.

21.2.2 Upon receipt of such item, the Contractor shall inspect the same visually and notify the Project Manager of any detected shortage, defect, or default. The Employer shall immediately remedy any shortage, defect, or default, or the Contractor shall, if practicable and possible, at the request of the Employer, remedy such shortage, defect, or default at the Employer's cost and expense. After inspection, such item shall fall under the care, custody, and control of the Contractor. According the Contractor shall be responsible for any further transportation, insurance and handling etc. of the items. The provision of this GCC sub clause 21.2.2 shall apply to any item supplied to remedy any such shortage or default or to substitute for any defective item, or shall apply to defective items that have been repaired.

21.2.3 The foregoing responsibilities of the Contractor and its obligations of care, custody, and control shall not relieve the Employer of liability for any undetected shortage, defect, or default, nor place the Contractor under any liability for any such shortage, defect or default whether under GCC Clause 27 or under any other provision of Contract.

21.3 Transportation

21.3.1 The Contractor shall at its own risk and expense transport all the Plant & materials and the Contractor's Equipment to the Site by the mode of transport that the Contractor judges most

suitable under all the circumstances.

21.3.2 Unless otherwise provided in the Contract, the Contractor shall be entitled to select any safe mode of transport operated by any person to carry the Plant & materials and the Contractor's Equipment.

21.3.3 Upon dispatch of each shipment of Plant & materials and the Contractor's Equipment, the Contractor shall notify the Employer by telex, cable, facsimile, or electronic means, of the description of the materials and of the Contractor's Equipment, the point and means of dispatch, and the estimated time and point of arrival in India, if applicable, and at the Site. The Contractor shall furnish the Employer with relevant shipping documents to be agreed upon between the parties.

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

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

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

21.3.7 Protection of Highways and Bridges

The Contractor shall use every reasonable means to prevent any of the highways or bridges communicating with or on the routes to the site from being damaged by any traffic of the Contractor or any of his subcontractors and, in particular, shall select routes, choose and use vehicles and restrict and distribute loads so that any such extraordinary traffic, as will inevitably arise from the moving of the Plant and material, Contractor's Equipment and machinery from and to the site, shall be limited, as far as reasonably possible, and so that no unnecessary damage may be occasioned to such highways and bridges. In case,

however, highways and bridges are damaged on account of movement of any traffic of the Contractor, he shall be liable to restore the highways and bridges to their original condition at his expense.

21.4 Customs Clearance

21.4.1. In case of CIP Entry Border Point / CIF Indian Port Of Entry Contracts, any Indian Customs duties or levies including the Stamp Duty and Import License Fee levied by the Government of India or any State Government in India on the Plant & materials to be incorporated in the Facilities as per the Contract, to be imported into India against Employer's Import License and which will become the property of the Employer under the Contract, shall be to the Employer's account and shall be paid directly by the Employer to Government of India or concerned authorities. In the event a Contractor is required by law to pay such levies in India, the same shall be reimbursed by the Employer to the Contractor in Indian Rupees, upon presentation of satisfactory documentary evidence for having made such payments. The Contractor shall submit a comprehensive list of all the goods to be imported into India under the Contract to enable the Employer to obtain the Import License endorsement of Project Imports for availing concessional rate of customs and import duties.

However, the Contractor shall arrange to get equipment assessed under 'Project Rate' or 'merit rate' of custom duty whichever is less as permitted under relevant notification for the type of Project.

21.4.2 In case of Ex – Works or FOR Site contracts, any Indian Customs duties or levies including the Stamp Duty and Import License Fee levied by the Government of India or any State Government in India on the Plant & materials to be supplied/ incorporated in the Facilities as per the Contract, to be imported into India against Contractor's Import License and which will become the property of the Employer upon transfer of ownership under the Contract, shall be to the Contractor's account and shall be paid directly by the Contractor to Government of India or concerned authorities. In the event Employer is required by law to pay such levies in India, the same shall be paid by the Employer to the Government of India or concerned authorities in Indian Rupees, upon presentation of satisfactory documentation related thereto and the amount so paid by the Employer from the payments from the bills falling immediately due to the Contractor.

21.4.2 The Contractor shall, at its own expense, handle all imported Plant & materials and Contractor's Equipment at the point(s) of import and shall handle any formalities for customs clearance, subject to the Employer's obligations under GCC sub clause 21.4.1, wherever applicable, provided that if applicable laws or regulations require any application or act to be made by or in the name of the Employer, the Employer shall take all necessary steps to comply with such laws or regulations. In the cases covered under sub clause 21.4.1, in the event of delays in customs clearance that are not the fault of the Contractor, the Contractor shall be entitled to an

extension in the Time for Completion, pursuant to GCC Clause 40.

21.5 Indemnity

21.5.1 For the Plant & material to be provided by the Contractor for the Facilities, it will be the responsibility of the Contractor to take delivery, unload and store the materials at Site and execute an Indemnity Bond, other deeds and obtain authorization letter from Employer as per proforma given in Section Contract Forms, in favour of the Employer against loss, damage and any risks involved for the full value of the materials. This Indemnity Bond shall be furnished by the Contractor before commencement of the supplies and shall be valid till the scheduled date of Operational Acceptance of the equipment by the Employer, and as may be extended from time to time..

22. Installation

22.1 Setting Out/Supervision

22.1.1 Benchmark

- (a) The Contractor shall be responsible for the true and proper setting-out of the Facilities in relation to bench marks, reference marks, and lines provided to it in writing by or on behalf of the Employer. The Contractor shall also be responsible and for the provisions of all instruments, appliances, materials and labour required in connection therewith in accordance with the Contract and the governing laws as per GCC sub clause 5.1.
- (b) If, at any time during the progress of installation of the Facilities, any error shall appear in the position, level, or alignment of the Facilities, the Contractor shall forthwith notify the Project Manager of such error and, at its own expense, immediately rectify such error to the reasonable satisfaction of the Project Manager. If such error is based on incorrect data provided in writing by or on behalf of the Employer, the expense of rectifying the same shall be borne by the Employer.
- (c) The Contractor shall provide all reasonable facilities and assistance to the Employer for checking the setting out, lines and grades established by the Contractor. The checking of any setting out or of any line and grade by the Employer shall not in any way relieve the Contractor of his responsibility for the correctness thereof.

22.1.2 Contractor's Supervision

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

22.2 Labor

22.2.1 Engagement of Staff and Labor

- (a) Except as otherwise stated in the Specification, the Contractor shall make arrangements for the engagement of all staff and labor, local or otherwise, and for their payment, housing, feeding, and transport.
- (b) The Contractor shall provide and employ on the Site in the installation of the Facilities such skilled, semi-skilled, and unskilled labor as is necessary for the proper and timely execution of the Contract. The Contractor is encouraged to use local labor that has the necessary skills.
- (c) The Contractor shall be responsible for obtaining all necessary labor licenses, registration, permit(s) and/or visa(s) from the appropriate authorities for the entry of all labor and personnel to be employed on the Site in India, where the Site is located. The Employer will, if requested by the Contractor, use his best endeavors in a timely and expeditious manner to assist the Contractor in obtaining any local, state, national, or government permission required for bringing in the Contractor's personnel.
- (d) The Contractor shall at its own expense provide the means of repatriation to all of its and its Subcontractor's personnel employed on the Contract at the Site to the place where they were recruited or to their domicile. It shall also provide suitable temporary maintenance of all such persons from the cessation of their employment on the Contract to the date programmed for their departure. In the event that the Contractor defaults in providing such means of transportation and temporary maintenance, the Employer may provide the same to such personnel and recover the cost of doing so from the Contractor.
- (e) The Contractor shall, if required by the Project Manager, deliver to him a return in detail, in such form and at such reasonable intervals as the Project Manager may prescribe, showing the staff and the numbers of the several classes of labor from time to time employed by the Contractor on the Site and such other information as the Project Manager may require.

22.2.2 Persons in the Service of Employer

The Contractor shall not recruit, or attempt to recruit, staff and labor from amongst the Employer's Personnel.

22.2.3 Labor Laws

- (a) The Contractor shall comply with all the relevant labor Laws applicable to the Contractor's Personnel, including Laws relating to their employment, health, safety, welfare, immigration, and emigration, and shall allow them all their legal rights.
- (b) The Contractor shall at all times during the progress of

the Contract use its best endeavors to prevent any unlawful, riotous, or disorderly conduct or behavior by or amongst its employees and the labor of its Subcontractors.

- (c) The Contractor shall, in all dealings with its labor and the labor of its Subcontractors currently employed on or connected with the Contract, pay due regard to all recognized festivals, official holidays, religious, or other customs and all local laws and regulations pertaining to the employment of labor.
- (d) During continuance of the Contract, the Contractor and his sub-contractors shall abide at all times by all applicable existing labour enactments and rules made thereunder, regulations notifications and byelaws of the State or Central Government or local authority and any other labour law (including rules), regulations bye laws that may be passed or notification that may be issued under any labour law in future either by the State or the Central Government or the local authority. The employees of the Contractor and the Sub-contractor in no case shall be treated as the employees of the Employer at any point of time.

Salient features of some major laws applicable to establishments engaged in building and other construction works are summarized below, however, notwithstanding the same, the Contractor shall comply with laws in force, and as might have been amended from time to time or as shall be amended till Completion of the Facilities :

- i) Workmen Compensation Act 1923: The Act provides for compensation in case of injury by accident arising out of and during the course of employment.
- ii) Payment of Gratuity Act 1972: Gratuity is payable to an employee under the Act on satisfaction of certain conditions on separation if an employee has completed 5 years' service or more or on death at the rate of 15 days wages for every completed year of service. The Act is applicable to all establishments employing 10 or more employees.
- iii) Employee P.F. and Miscellaneous Provision Act 1952: The Act provides for monthly contribution by the employer plus workers @10% or 8.33%. The benefits under the Act are:
 - a. Pension or family pension on retirement or death, as the case may be.
 - b. Deposit linked insurance on death in harness of the worker.
 - c. Payment of P.F. accumulation on retirement/death etc.
- iv) Maternity Benefit Act 1951: The Act provides for leave and some other benefits to women employees in case of confinement or miscarriage

etc.

- v) Contract Labour (Regulation & Abolition) Act 1970: The Act provides for certain welfare measures to be provided by the Contractor to contract labour and in case the Contractor fails to provide, the same are required to be provided, by the Principal Employer by law. The Principal Employer is required to take Certification of Registration and the Contractor is required to take license from the designated Officer. The Act is applicable to the establishments or Contractor of Principal Employer if they employ 20 or more labour/ contract labour.
- vi) Minimum Wages Act 1948: The Employer is supposed to pay not less than the Minimum Wages fixed by appropriate Government as per provision of the Act if the employment is a scheduled employment. Construction of Buildings, Roads, Runways are scheduled employments.
- vii) Payment of Wages Act 1936: It lays down as to by what date the wages are to be paid, when it will be paid and what deductions can be made from the wages of the workers.
- viii) Equal Remuneration Act 1979: The Act provides for payment of equal wages for work of equal nature to Male and Female workers and for not making discrimination against Female employees in the matters of transfers, training and promotions etc.
- ix) Payment of Bonus Act 1965: The Act is applicable to all establishments employing 20 or more employees. The Act provides for payments of annual bonus subject to a minimum of 8.33% of wages and maximum of 20% of wages to employees drawing Rs. 3500/- per month or less. The bonus is to be paid to employees getting Rs. 2500/- per month or above up to Rs. 3500/- per month shall be worked out by taking wages as Rs. 2500/- per month only. The Act does not apply to certain establishments. The newly set-up establishments are exempted for five years in certain circumstances. Some of the State Governments have reduced the employment size from 20 to 10 for the purpose of applicability of this Act.
- x) Industrial Dispute Act 1947: the Act lays down the machinery the procedure for resolution of Industrial disputes, in what situations a strike or lock-out becomes illegal and what are the requirements for laying off or retrenching the employees or closing down the establishment.
- xi) Industrial Employment (Standing Orders) Act 1946: It is applicable to all establishments employing 100 or more workmen (employment size reduced by

some of the States and Central Government to 50). The Act provides for laying down rules governing the conditions of employment by the Employer on matters provided in the Act and get the same certified by the designated Authority.

- xii) Trade Unions Act 1926: The Act lays down the procedure for registration of trade unions of workmen and employers. The Trade Unions registered under the Act have been given certain immunities from civil and criminal liabilities.
- xiii) Child Labour (Prohibition & Regulation) Act 1986: The Act prohibits employment of children below 14 years of age in certain occupations and processes and provides for regulation of employment of children in all other occupations and processes. Employment of Child Labour is prohibited in Building and Construction Industry.
- xiv) Inter-State Migrant workmen's (Regulation of Employment & Conditions of Service Act 1979: The Act is applicable to an establishment which employs 5 or more inter-state migrant workmen through an intermediary (who has recruited workmen in one state for employment in the establishment situated in another state). The Inter-State migrant workmen, in an establishment to which this Act becomes applicable, are required to be provided certain facilities such as housing, medical aid, traveling expenses from home upto the establishment and back, etc.
- xv) The Building and Other Construction workers (Regulation of Employment and Conditions of Service) Act 1996 and the Cess Act of 1996 : All the establishments who carry on any building or other construction work and employ 10 or more workers are covered under this Act. All such establishments are required to pay cess at the rate not exceeding 2% of the cost of construction as may be modified by the Government. The Employer of the establishment is required to provide safety measures at the Building or construction work and other welfare measures, such as Canteens, First-Aid facilities, Ambulance, Housing accommodations for workers near the work place etc. The Employer to whom the Act applies has to obtain a registration certificate from the Registering Officer appointed by the government.
- xvi) Factories Act 1948: The Act lays down the procedure for approval at plans before setting up a factory, health and safety provisions, welfare provisions, working hours, annual earned leave and rendering information regarding accidents or dangerous occurrences to designated authorities. It is applicable to premises employing 10 persons or more with aid of power or 20 or more persons

without the aid of power engaged in manufacturing process.

- (e) The Contractor shall keep the Employer indemnified in case any action is taken against the Employer by the competent authority on account of contravention of any of the provisions of any Act or rules made thereunder, regulations or notifications including amendments.
- (f) If the Employer is caused to pay under any law as principal employer such amounts as may be necessary to cause or observe, or for non-observance of the provisions stipulated in the notifications/ byelaws/Acts/ Rules/regulations including amendments, if any, on the part of the Contractor, the Employer shall have the right to deduct any money due to the Contractor under this contract or any other contract with the employer including his amount of performance security for adjusting the aforesaid payment. The Employer shall also have right to recover from the Contractor any sum required or estimated to be required for making good the loss or damage suffered by the Employer.

22.2.4 Rates of Wages and Conditions of Labor

- (a) The Contractor shall pay rates of wages, and observe conditions of labor, which are not lower than those established for the trade or industry where the work is carried out. If no established rates or conditions are applicable, the Contractor shall pay rates of wages and observe conditions which are not lower than the general level of wages and conditions observed locally by employers whose trade or industry is similar to that of the Contractor.
- (b) The Contractor shall inform the Contractor's Personnel about their liability to pay personal income taxes in the Country in respect of such of their salaries, wages, and allowances as are chargeable under the Laws for the time being in force, and the Contractor shall perform such duties in regard to such deductions thereof as may be imposed on him by such Laws.
- (c) The Contractor shall not make employment decisions based upon personal characteristics unrelated to job requirements. The Contractor shall base the employment relationship upon equal opportunity and fair treatment, and shall not discriminate with respect to aspects of employment relationship, including recruitment and hiring, compensation (including wages and benefits), working conditions and terms of employment or retirement, and discipline.
- (d) The Contractor shall provide equal wages and benefits to men and women for work of equal value or type,

22.2.5 Working Hours

- (a) No work shall be carried out on the Site on locally recognized days of rest, or outside the normal working

hours, unless

- (i) otherwise stated in the Contract;
 - (ii) the Project Manager gives consent; or
 - (iii) the work is unavoidable, or necessary for the protection of life or property or for the safety of the Works, in which case the Contractor shall immediately advise the Project Manager.
- (b) If and when the Contractor considers it necessary to carry out work at night or on public holidays so as to meet the Time for Completion and requests the Project Manager's consent thereto, the Project Manager shall not unreasonably withhold such consent.
- (c) This sub clause shall not apply to any work which is customarily carried out by rotary or double shifts.

22.2.6 Facilities for Staff and Labor

- (a) Except as otherwise stated in the Specification, the Contractor shall provide and maintain all necessary accommodation and welfare facilities for the Contractor's Personnel. The Contractor shall also provide facilities for the Employer's Personnel as stated in the Specification.
- (b) The accommodation referred to in (a) must be equipped adequately with latrines and urinals as per standard norms for highest standards of hygiene, to the full satisfaction of Project Manager.
- (c) The Contract shall ensure provision of Rest Shelters and Crèches at Site as per Government norms and to the full satisfaction of the Project Manager.
- (d) The Contractor shall not permit any of the Contractor's Personnel to maintain any temporary or permanent living quarters within the structures forming part of the Facilities/ permanent Works.

22.2.7 Health and Safety

- (a) The Contractor shall at all times take all reasonable precautions to maintain the health and safety of the Contractor's Personnel. In collaboration with local health authorities, the Contractor shall ensure that medical staff, first aid facilities, sick bay, and ambulance service are available at all times at the Site and at any accommodation for Contractor's and Employer's Personnel, and that suitable arrangements are made for all necessary welfare and hygiene requirements and for the prevention of epidemics.
- (b) The Contractor shall appoint an accident prevention officer at the Site, responsible for maintaining safety and protection against accidents. This person shall be qualified for this responsibility, and shall have the authority to issue instructions and take protective measures to prevent accidents. Throughout the performance of the Contract, the Contractor shall provide whatever is required by this person to exercise

this responsibility and authority.

- (c) The Contractor shall send to the Project Manager, details of any accident as soon as practicable after its occurrence. The Contractor shall maintain records and make reports concerning health, safety, and welfare of persons, and damage to property, as the Project Manager may reasonably require.
- (d) The Contractor shall conduct health and safety programs for workers employed under the project, and shall include information on the trafficking of women and the risk of sexually transmitted diseases, including HIV/AIDS in such programs.
- (e) The Contractor shall ensure compliance to and observe the safety regulations and provisions, if any, specified in SCC, at Site.

22.2.8 Funeral Arrangements

In the event of the death of any of the Contractor's personnel or accompanying members of their families, the Contractor shall be responsible for making the appropriate arrangements for their return or burial.

22.2.9 Records of Contractor's Personnel

The Contractor shall keep accurate records of the Contractor's Personnel, including the number of each class of Contractor's Personnel on the Site and the names, ages, gender, hours worked, and wages paid to all workers. These records shall be summarized on a monthly basis in a form approved by the Project Manager and shall be available for inspection by the Project Manager until the Contractor has completed all work.

22.2.10 Supply of Foodstuff

The Contractor shall arrange for the provision of a sufficient supply of suitable food as may be stated in the Specification at reasonable prices for the Contractor's Personnel for the purposes of or in connection with the Contract.

22.2.11 Supply of Water

The Contractor shall, having regard to local conditions, provide on the Site an adequate supply of drinking and other water for the use of the Contractor's Personnel.

22.2.12 Measures against Insect and Pest Nuisance

The Contractor shall at all times take the necessary precautions to protect the Contractor's Personnel employed on the Site from insect and pest nuisance, and to reduce their danger to health. The Contractor shall comply with all the regulations of the local health authorities, including use of appropriate insecticide.

22.2.13 Alcoholic Liquor or Drugs

The Contractor shall not, otherwise than in accordance with the Laws of the Country, import, sell, give barter, or otherwise dispose of any alcoholic liquor or drugs, or permit or allow importation, sale, gift barter, or disposal by Contractor's Personnel.

22.2.14 Arms and Ammunition

The Contractor shall not give, barter, or otherwise dispose of, to any person, any arms or ammunition of any kind, or allow Contractor's Personnel to do so.

22.2.15 Prohibition of All Forms of Forced or Compulsory Labor

The contractor shall not employ "forced or compulsory labor" in any form. "Forced or compulsory labor" consists of all work or service, not voluntarily performed, that is extracted from an individual under threat of force or penalty.

22.2.16 Prohibition of Harmful Child Labor

The Contractor shall not employ any child to perform any work that is economically exploitative, or is likely to be hazardous to, or to interfere with, the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral, or social development. "Child" means a child below the statutory minimum age specified under applicable National, State or local law in India."

22.2.17 In addition to the above, the stipulations, if any, specified in **SCC** shall also apply.

22.3 Contractor's/ Construction Equipment

22.3.1 The Contractor shall provide and install all necessary Contractor's/ Construction Equipment and plant required for the execution of the Works under the Contract, at his cost and shall use such methods and appliances for the purpose of all the operations connected with execution of the Works covered by the Contract which shall ensure the Completion of the Facilities/ Works within the specified Time for Completion. The Contractor's Equipment shall preferably be new.

22.3.2 The Contractor shall deploy Construction Equipment as per agreed schedule. In case of slow rate of progress of the Works for the reasons attributable to the Contractor, the Contractor shall deploy additional Construction Equipment so as to ensure Completion of the Facilities/ Works within Time for Completion at no extra cost to Employer.

22.3.3 The Contractor shall make necessary arrangements for repair/maintenance of Contractor's Equipment deployed/utilized at Site, by arranging proper workshop, storage facilities, experienced manpower for routine maintenance etc. close to the Site locations.

22.3.4 All Contractor's Equipment brought by the Contractor onto the Site shall be deemed to be intended to be used exclusively for the execution of the Contract. The Contractor shall not remove the same from the Site without the Project Manager's consent that such Contractor's Equipment is no longer required for the execution of the Contract. Provided always that any such approval of shifting of Construction Equipment shall not absolve the Contractor of his obligations for due execution of the Works within the Time for Completion as per the Contract.

22.3.5 Unless otherwise specified in the Contract, upon

Completion of the Facilities, the Contractor shall remove from the Site all Equipment brought by the Contractor onto the Site and any surplus materials remaining thereon.

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

22.4 Site Regulations and Safety

The Contractor, throughout the execution and Completion of the Works/ Facilities and the remedying of any defects therein, shall be responsible for the safety of all Contractor's activities on the Site including (a) safety of all persons entitled to be upon the Site and (b) keeping the Site (so far as the same is under the Contractor's care and custody) and the Facilities/ Works (so far as the same are not completed and taken over by the Employer) in an orderly state for avoidance of any danger to the Facilities/ Works.

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

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

22.5 Opportunities for Other Contractors

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

- 22.5.2 If the Contractor, upon written request from the Employer or the Project Manager, makes available to other contractors any roads or ways the maintenance for which the Contractor is responsible, permits the use by such other contractors of the Contractor's Equipment, or provides any other service of whatsoever nature for such other contractors, the Employer shall fully compensate or require the other contractors to fully compensate the Contractor for any loss or damage caused or occasioned by such other contractor(s) in respect of any such use or service, and shall pay to the Contractor or require the other contractor(s) to pay reasonable remuneration for the use of such equipment or the provision of such services.

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

- 22.5.4 The Contractor shall notify the Project Manager promptly of any defects in the other Contractors' work that come to its

notice, and that could affect the Contractor's work. The Project Manager shall determine the corrective measures, if any, required to rectify the situation after inspection of the Facilities. Decisions made by the Project Manager shall be binding on the Contractor.

22.6 Emergency Work

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

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

22.7 Site Clearance

22.7.1 Site Clearance in Course of Performance

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

22.7.2 Clearance of Site after Completion

After Completion of all parts of the Facilities, the Contractor shall clear away and remove all wreckage, rubbish, and debris of any kind from the Site, and shall leave the Site and Facilities in a clean and safe condition.

22.8 Watching and Lighting

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

22.9 Environment and Social

22.9.1 The Contractor shall be fully responsible for compliance with all relevant environmental protection and social safeguards regulations and standards with respect to provision of the Plant and Incidental Services for the Facilities including Contractor's Equipment and with respect to the Contractor's personnel, and sub-contractors pursuant to the Contract.

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

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

Salient features of some of the major laws that are applicable are given below, however, notwithstanding the same, the Contractor shall comply with laws in force, and as might have been amended from time to time or as shall be amended till Completion of the Facilities:

- i) The Water (Prevention and Control of Pollution) Act, 1974, This provides for the prevention and control of water pollution and the maintaining and restoring of wholesomeness of water. 'Pollution' means such contamination of water or such alteration of the physical, chemical or biological properties of water or such discharge of any sewage or trade effluent or of any other liquid, gaseous or solid substance into water (whether directly or indirectly) as may, or is likely to, create a nuisance or render such water harmful or injurious to public health or safety, or to domestic, commercial, industrial, agricultural or other legitimate uses, or to the life and health of animals or plants or of aquatic organisms.
- ii) The Air (Prevention and Control of Pollution) Act, 1981, This provides for prevention, control and abatement of air pollution. 'Air Pollution' means the presence in the atmosphere of any 'air pollutant', which means any solid, liquid or gaseous substance (including noise) present in the atmosphere in such concentration as may be or tend to be injurious to human beings or other living creatures or plants or property or environment.
- iii) The Environment (Protection) Act, 1986, This provides for the protection and improvement of environment and for matters connected therewith, and the prevention of hazards to human beings, other living creatures, plants and property. 'Environment' includes water, air and land and the inter-relationship which exists among and between water, air and land, and human beings, other living creatures, plants, micro-organism and property.
- iv) The Public Liability Insurance Act, 1991, This provides for public liability insurance for the purpose of providing immediate relief to the persons affected by accident occurring while handling hazardous substances and for matters connected herewith or incidental thereto.

Hazardous substance means any substance or preparation which is defined as hazardous substance under Environment (Protection) Act, 1986, and exceeding such quantity as may be specified by notification by the Central Government.

22.9.3 The Contractor shall ensure implementation of appropriate social safeguards standards and practices for all personnel involved in provision of Plant and Incidental Services for the Facilities including Contractor's Equipment.

22.9.4 The Contractor shall ensure that the Plant and Incidental Services for the Facilities supplied, delivered and installed are free from modern slavery.

22.9.5 The Contractor shall also ensure compliance with the provisions, if any, specified in SCC.

22.10 Additional Provisions: Additional provisions, if any, specified in SCC shall also be applicable.

23. Quality Assurance, Test and Inspection

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

23.2 The Employer and the Project Manager or their designated representatives shall be entitled to attend the aforesaid test and/or inspection, provided that the Employer shall bear all costs and expenses incurred in connection with such attendance including, but not limited to, all traveling and boarding and lodging expenses. However, the Contractor shall afford such facilities as may be required for such inspection and examination

23.3 Whenever the Contractor is ready to carry out any such test and/or inspection, the Contractor shall give an advance notice for the period, if any, specified in SCC, or reasonable advance notice, if no period is specified, of such test and/or inspection and of the place and time thereof to the Project Manager. The Contractor shall obtain from any relevant third party or manufacturer any necessary permission or consent to enable the Employer and the Project Manager or their designated representatives to attend the test and/or inspection.

23.4 The Contractor shall provide the Project Manager with a certified report of the results of any such test and/or inspection.

When the plant, services or goods have passed the tests referred to in the Contract, the Project Manager shall furnish to the Contractor a certificate or endorse the Contractor's test certificate to that effect.

If the Employer or Project Manager or their designated representatives fails to attend the test and/or inspection, or if it is agreed between the parties that such persons shall not do so, then the Contractor may proceed with the test and/or inspection in the absence of such persons, and may provide the Project Manager with a certified report of the results thereof.

23.5 The Project Manager may require the Contractor to carry out any

test and/or inspection not required by the Contract, provided that the Contractor's reasonable costs and expenses incurred in the carrying out of such test and/or inspection shall be reimbursed by the Employer to the Contractor against documentary evidence. Further, if such test and/or inspection impedes the progress of work on the Facilities and/or the Contractor's performance of its other obligations under the Contract, due allowance will be made in respect of the Time for Completion and the other obligations so affected.

- 23.6 If any Plant or any part of the Facilities fails to pass any test and/or inspection, the Contractor shall either rectify or replace such Plant or part of the Facilities and shall repeat the test and/or inspection upon giving a notice under GCC sub clause 23.3.

Till such time the test result do not comply with and fulfill the criteria specified in the Employer's Requirement and/ or elsewhere in the Contract, the payment to the Contractor will be limited and the Contractor shall not be paid unless he has rectified all such imperfect work and complies with and fulfills the specified criteria. The decision of the Employer in such matters shall be final and binding on the Contractor

- 23.7 If any dispute or difference of opinion shall arise between the parties in connection with or arising out of the test and/or inspection of the Plant or part of the Facilities that cannot be settled between the parties within a reasonable period of time, it may be referred for resolution in accordance with GCC Clause 45.

- 23.8 The Contractor shall afford the Employer and the Project Manager, at the Employer's expense, access at any reasonable time to any place where the Plant are being manufactured or the Facilities are being installed, in order to inspect the progress and the manner of manufacture or installation, provided that the Project Manager shall give the Contractor a reasonable prior notice.

- 23.9 The Contractor agrees that neither the execution of a test and/or inspection of Plant or any part of the Facilities, nor the attendance by the Employer or the Project Manager, nor the issue of any test certificate pursuant to GCC sub clause 23.4, shall release the Contractor from any other responsibilities under the Contract.

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

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

If any parts of the Facilities or foundations have been covered up at the Site after compliance with the requirement of GCC sub clause 23.10 and are found to be executed in accordance with the Contract, the expenses of uncovering, making openings in or through, reinstating, and making good the same shall be borne by

the Employer, and the Time for Completion shall be reasonably adjusted to the extent that the Contractor has thereby been delayed or impeded in the performance of any of its obligations under the Contract.

23.12 Identification of Defects through Quality Assurance and Inspection

23.12.1 The Contractor shall establish Quality Control/Quality Assurance Systems and facilities and shall at all times provide to the Project Manager reports about such checks and inspections.

23.12.2 The Employer, the Project Manager or the Employer's authorized quality surveillance personnel, will check the quality of the Plant/Works, including design, procurement, manufacture, fabrication, construction, installation, erection, testing and commissioning activities, commensurate with the Quality Control and Quality Assurance Plan prepared by the Contractor, and will notify the Contractor of any defects that are found. Such checking, whether carried out at the Site or at any other place related to the Plant/Works, shall not affect the Contractor's responsibilities and obligations under the Contract.

23.12.3 The Project Manager or Employer's authorized quality surveillance personnel may instruct the Contractor to search for a defect at any stage of an activity and to uncover and test any part of the Plant/Works that the Employer or Project Manager considers may have a defect.

23.12.4 The Plant/Works during installation/ construction and after Completion may be subjected to technical examination/ audit by any independent authority/ agent. If any defect of Plant, materials or workmanship is found during technical examination/ audit, then compensation thereof shall be recovered from the Contractor even if it has been accepted by the Employer.

24. Pre-Commissioning of the Facilities

24.1 As soon as the Facilities or any part thereof has, in the opinion of the Contractor, been completed operationally and structurally and put in a tight and clean condition as specified in the Employer's Requirements, excluding minor items not materially affecting the operation or safety of the Facilities, the Contractor shall so notify the Employer in writing.

24.2 Within 7 days after receipt of the notice from the Contractor under GCC sub clause 24.1, the Employer shall depute its operating and maintenance personnel and provide such materials, utilities, facilities, services, and other matters, to the extent and if specified in the Appendix (Scope of Works and Supply by the Employer) to the Contract Agreement, for Pre-commissioning of the Facilities or any part thereof.

24.3 As soon as reasonably practicable, after the Employer has deputed its operating and maintenance personnel and provided such materials, utilities, facilities, services, and other matters, to the extent and if specified in the Appendix (Scope of Works and Supply by the Employer), in accordance with GCC sub clause 24.2, the Contractor shall commence Pre-commissioning of the Facilities or the relevant part thereof in preparation for Commissioning, subject to GCC sub clause 25.5.

24.4 As soon as all works in respect of Pre-commissioning are completed and, in the opinion of the Contractor, the Facilities or any part thereof is ready for Commissioning, the Contractor shall so notify the Project Manager in writing.

24.5 The Project Manager, if satisfied that the Facilities or that part thereof have passed Precommissioning, shall, within 14 days after receipt of the Contractor's notice under GCC sub clause 24.4 advise the Contractor to proceed with the Commissioning of the Facilities or that part thereof, or else notify the Contractor in writing of any defects and/or deficiencies.

If the Project Manager notifies the Contractor of any defects and/or deficiencies, the Contractor shall then correct such defects and/or deficiencies, and shall repeat the procedure described in GCC sub clause 24.4.

If the Project Manager is satisfied that the Facilities or that part thereof have passed Precommissioning, the Project Manager shall, within 7 days after receipt of the Contractor's repeated notice, advise the Contractor to proceed with the Commissioning of the Facilities or that part thereof.

If the Project Manager is not so satisfied, then it shall notify the Contractor in writing of any defects and/or deficiencies within 7 days after receipt of the Contractor's repeated notice, and the above procedure shall be repeated.

24.6 If the Project Manager fails to advise the Contractor to proceed with the Commissioning of the Facilities or that part thereof or fails to inform the Contractor of any defects and/or deficiencies within 14 days after receipt of the Contractor's notice under GCC sub clause 24.4 or within 7 days after receipt of the Contractor's repeated notice under GCC sub clause 24.5, then the Facilities or that part thereof shall be deemed to have passed Precommissioning as of the date of the Contractor's notice or repeated notice, as the case may be.

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

**25. Commissioning,
Trial Operation
and Operational
Acceptance**

25.1 Commissioning

25.1.1 Commissioning of the Facilities or any part thereof shall be commenced by the Contractor immediately after being advised by the Project Manager to proceed with the Commissioning of the Facilities or that part thereof, pursuant to GCC sub clause 24.5, or immediately after the date of the deemed Precommissioning, under GCC sub clause 24.6.

25.1.2 The Employer shall depute its operating and maintenance personnel and provide such materials, utilities, facilities, services, and other matters, to the extent and if specified in the Appendix (Scope of Works and Supply by the Employer), required for Commissioning.

25.1.3 Commissioning of the Facilities (or specific part thereof where specific parts are specified in the GCC 8.2) shall be

completed by the Contractor as per the procedures detailed in Employer's Requirements or elsewhere in the Contract. The Employer's /Project Manager's advisory personnel shall attend and witness the Commissioning, Trial Operation including the guarantee test, if any specified in Employer's Requirements. .

25.1.4 During the Commissioning, the Contractor shall commence Trial Operation of the Facilities or any part thereof for a continuous period, if any, as specified in Employer's Requirements and the Guarantee Tests pursuant to GCC sub clause 25.2 if the successful completion of Guarantee Tests is a requirement precedent to Completion, in presence of Employer's representative. As soon as, the Trial Operation and Guarantee Tests, as may be applicable, are completed, the Contractor shall so notify the Project Manager in writing.

25.1.5 The Project Manager shall, within twenty one (21) days after receipt of the Contractor's notice under GCC Sub-Clause 25.1.4, and upon Contractor's fulfillment of his obligations and responsibilities under GCC sub clause 9.8, GCC sub clause 9.9 and, if any, specified in SCC, either issue a **Completion (Taking Over) Certificate** in the form specified in the Section Employer's Requirements/ Contract Forms or in another form acceptable to the Employer, stating that the Facilities or that part thereof have reached Completion as of the date of the Contractor's notice under GCC Sub-Clause 25.1.4, or notify the Contractor in writing of any defects and/or deficiencies within fourteen (14) days after receipt of the Contractor's notice.

If the Project Manager notifies the Contractor of any defects and/or deficiencies, the Contractor shall then correct such defects and/or deficiencies, and shall repeat the procedure described in GCC sub clause 25.1.4. If the Project Manager is satisfied that the Facilities or that part thereof have reached Completion, the Project Manager shall, within twenty one (21) days after receipt of the Contractor's repeated notice, issue a **Completion (Taking Over) Certificate** in the form specified in the Section Employer's Requirements/ Contract Forms or in another form acceptable to the Employer, stating that the Facilities or that part thereof have reached Completion as of the date of the Contractor's repeated notice. If the Project Manager is not so satisfied, then it shall notify the Contractor in writing of any defects and/or deficiencies within seven (7) days after receipt of the Contractor's repeated notice, and the above procedure shall be repeated.

25.1.6 If the Project Manager fails to issue the Completion (Taking Over) Certificate and fails to inform the Contractor of any defects and/or deficiencies pursuant to the Contractor's notice under GCC sub clause 25.1.4 or pursuant to the Contractor's repeated notice under GCC sub clause 25.1.5, or if the Employer makes use of the Facilities or part thereof, then the Facilities or that part thereof shall be deemed to have reached Completion as of the date of the Contractor's notice or repeated notice, or as of the Employer's use of the Facilities, as the case may be.

25.1.7 If for reasons attributable to the Employer, as specified in GCC clause 25.5, Trial Operation of the Facilities or any part thereof for a continuous period as specified in Employer's Requirements, Precommissioning or Commissioning cannot be successfully attained within the Time for Completion specified in the GCC or any other period agreed by the Employer and Contractor, the provisions of Clause GCC 25.5 and its sub-clauses shall apply.

25.1.8 As soon as possible after Completion, the Contractor shall complete all outstanding minor items, if any, as per the schedule mutually agreed between the Employer and the Contractor, so that the Facilities or the relevant part thereof, are fully in accordance with the requirements of the Contract, failing which the Employer will undertake such completion and deduct the costs thereof from any monies owing to the Contractor.

25.1.9 Upon Completion, the Employer shall be responsible for the care and custody of the Facilities or the relevant part thereof, together with the risk of loss or damage thereto, and shall thereafter take over the Facilities or the relevant part thereof.

25.1.10 Upon Completion of construction, the Contractor shall fully reinstate path ways, other local infrastructure, and agriculture land to at least their pre-project condition as recorded by the Contractor with its obligation in clause 21.1.

25.2 Guarantee Test

25.2.1 Subject to GCC sub clause 25.5, the Guarantee Test, as may be specified in the Employer's Requirement or elsewhere in the Contract, and repeats thereof, shall be conducted by the Contractor after Trial Operation of the Facilities or the relevant part thereof, and successfully completed, to ascertain whether the Facilities or the relevant part can attain the Functional Guarantees specified in the Appendix (Functional Guarantees) to the Contract Agreement and pursuant to GCC Clause 28. Whether or not the successful completion of Guarantee Tests is a requirement precedent to Completion or the Guarantee Tests is required to be completed after Completion, shall be as specified in SCC. The Employer shall promptly provide the Contractor with such information as the Contractor may reasonably require in relation to the conduct and results of the Guarantee Test and any repeats thereof.

25.2.2 If for reasons attributable to the Employer, the Guarantee Test of the Facilities or the relevant part thereof cannot be successfully completed as per GCC sub clause 25.2.1 or as may be agreed upon by the Employer and the Contractor, provision of GCC sub clause 25.5 shall apply.

25.3 Operational Acceptance

25.3.1 Subject to GCC sub clause 25.4 below, Operational Acceptance shall occur in respect of the Facilities or any part thereof, as under:

(a) (i) In case, as per GCC sub clause 25.2.1, the

successful completion of Guarantee Tests is not a requirement precedent to Completion of the Facilities or that part thereof :

Subsequent to Completion of the Facilities or that part thereof, the Guarantee Tests are successfully completed and the Functional Guarantees referred to in GCC sub clause 25.2.1, are met or the Contractor has paid the liquidated damages specified in GCC sub clause 28.3 hereof;

OR

- (a) (ii) In case, as per GCC sub clause 25.2.1, the successful completion of Guarantee Tests is a requirement precedent to Completion of the Facilities or that part thereof or Guarantee Tests are not applicable :

The Facilities or the relevant part thereof have been successfully commissioned, Trial – Operation for the specified period have been successfully completed, the Guarantee Tests are successfully completed and the Functional Guarantees referred to in GCC sub clause 25.2.1, are met or the Contractor has paid the liquidated damages specified in GCC sub clause 28.3 hereof; and Completion (Taking Over) certificate has been issued by the Employer;

AND

- (b) Any minor items mentioned in GCC sub clause 24.7 and GCC sub clause 25.1.8 hereof relevant to the Facilities or that part thereof have been completed.

25.3.2 At any time after the events set out in GCC sub clause 25.3.1 have occurred, the Contractor may give a notice to the Project Manager requesting the issue of an Operational Acceptance Certificate in the form specified in the Section Employer's Requirements/ Contract Forms or in another form acceptable to the Employer, in respect of the Facilities or the part thereof specified in such notice as of the date of such notice.

25.3.3 The Project Manager shall, after consultation with the Employer, and within twenty-one (21) days after receipt of the Contractor's notice, issue an Operational Acceptance Certificate.

The Operational Acceptance Certificate shall not be unreasonably withheld nor shall the Employer delay the issuance thereof, on account of minor omissions or defects which do not affect the Operation and/or cause any serious risk to the Facilities or personnel, provided that a programme has been mutually agreed between the Employer and the Contractor covering the remedial action for the outstanding minor omissions/defects.

Such certificate shall not relieve the Contractor of any of its obligations which otherwise survive, by the terms and conditions of the Contract after issuance of such certificate.

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

25.4 Partial Acceptance

25.4.1 If the Contract specifies that Commissioning, Trial Operation, Completion and/ or Operational Acceptance shall be carried out in respect of parts of the Facilities, the corresponding provisions relating thereto shall apply to each such part of the Facilities individually, and the Completion (Taking Over) Certificate and/ or the Operational Acceptance Certificate shall be issued accordingly for each such part of the Facilities.

25.5 Delayed Pre-Commissioning and/or Guarantee Test

25.5.1 In the event that the Contractor is unable to proceed with the Pre-commissioning, Commissioning, Trial-run, and Guarantee Test of the Facilities or part thereof, pursuant to GCC Clause 24 and GCC Clause 25, for reasons attributable to the Employer, the provisions leading to "deemed" completion of activities such as Completion, pursuant to GCC sub clause 25.1.7, and Operational Acceptance, pursuant to GCC sub clause 25.3.4, and GCC Clause 41.1, Suspension, shall not apply. In this case, the following provisions shall apply and Contractor's obligations regarding Defect Liability Period, pursuant to GCC sub clause 27.2, Functional Guarantee, pursuant to GCC Clause 28, and Care of Facilities, pursuant to GCC Clause 32 shall stand modified correspondingly

25.5.2 When the Contractor is notified by the Project Manager that he will be unable to proceed with the activities and obligations pursuant to above sub clause 25.5.1, the Contractor shall be entitled to the following:

- (a) the Time of Completion shall be extended for the period of suspension without imposition of liquidated damages pursuant to GCC sub clause 26.2;
- (b) payments due to the Contractor in accordance with the provision specified in the Appendix (Terms and Procedures of Payment) to the Contract Agreement, which would not have been payable in normal circumstances due to noncompeting of the subject activities, shall be released to the Contractor against submission of a security in the form of a bank guarantee or any other guarantee as the Employer may agree, of equivalent amount, acceptable to the Employer, and which shall become null and void when the Contractor will have complied with its obligations regarding those payments, subject to the provision of

sub clause 25.5.3 below;

- (c) the expenses towards the above security and extension of other securities under the contract, of which validity needs to be extended, shall be reimbursed to the Contractor by the Employer;
- (d) the additional charges towards the care of the Facilities pursuant to GCC sub clause 32.1 shall be reimbursed to the Contractor by the Employer for the period between the notification mentioned above and the notification mentioned in sub clause 25.5.4 below.

25.5.3 In the event that the period of suspension under above sub clause 25.5.1 actually exceeds 180 days, the Employer and Contractor shall mutually agree to any additional compensation payable to the Contractor.

25.5.4 When the Contractor is notified by the Project Manager that the Facilities or part thereof is ready for Pre-commissioning, or any other activity as may be applicable in line with the aforesaid provisions, the Contractor shall proceed without delay in performing all the specified activities and obligations under the contract.

F. Guarantees and Liabilities

26. Completion Time Guarantee

26.1 The Contractor guarantees that it shall attain Completion of the Facilities (or a part for which a separate Time for Completion is specified) within the Time for Completion specified in the SCC pursuant to GCC Clause 8, or within such extended time to which the Contractor shall be entitled under GCC Clause 40 hereof.

26.2 If the Contractor fails to comply with the Time for Completion in accordance with GCC sub clause 26.1 for the whole of the facilities, (or a part for which a separate time for completion is specified) then the Contractor shall pay to the Employer a sum equivalent to half percent (0.5%) of the Contract Price of the whole of the Facilities (or a part for which a separate Time for Completion is specified) as liquidated damages for such default and not as a penalty, without prejudice to the Employer's other remedies under the Contract, for each week or part thereof which shall elapse between the relevant Time for Completion and the date stated in Completion (Taking Over) Certificate of the whole of the Facilities (or a part for which a separate Time for Completion is specified) subject to the limit of five percent (5%) of Contract Price of the whole of the Facilities (or a part for which a separate Time for Completion is specified). The Employer may, without prejudice to any other method of recovery, deduct the amount of such damages from any monies due or to become due to the Contractor. The payment or deduction of such damages shall not relieve the Contractor from his obligation to complete the Facilities, or from any other of his obligations and liabilities under the Contract. Further, once the limit mentioned above for the liquidated damages is reached, the Employer may consider termination of the Contract, pursuant to GCC sub clause 42.2.2.

For the application of liquidated damages, the schedule date for Completion (Taking Over) of the Facilities (or any part thereof where specific parts are specified in the GCC 8.2), shall be the basis, and not intermediate schedule milestones, unless otherwise specified in SCC.

27. Defect Liability

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

27.2 The Defect Liability Period shall be 2 years from the date of Completion of the Facilities (or any part thereof) or 2 years from the date of Operational Acceptance of the Facilities (or any part thereof), whichever occurs later, unless specified otherwise in the SCC, and pursuant to GCC sub clause 27.10.

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

- (a) improper operation or maintenance of the Facilities by the Employer,
- (b) operation of the Facilities outside specifications provided in the Contract, or

27.3 The Contractor's obligations under this GCC Clause 27 shall not apply to:

- (a) any materials that are supplied by the Employer under GCC sub clause 21.2, are normally consumed in operation, or have a normal life shorter than the Defect Liability Period stated herein;
- (b) any designs, specifications or other data designed, supplied, or specified by or on behalf of the Employer or any matters for which the Contractor has disclaimed responsibility herein; or
- (c) any other materials supplied or any other work executed by or on behalf of the Employer, except for the work executed by the Employer under GCC sub clause 27.7.

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

27.5 The Employer shall afford the Contractor all necessary access to the Facilities and the Site to enable the Contractor to perform its obligations under this GCC Clause 27.

The Contractor may, with the consent of the Employer, remove from

the Site any Plant or any part of the Facilities that are defective if the nature of the defect, and/or any damage to the Facilities caused by the defect, is such that repairs cannot be expeditiously carried out at the Site.

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

If such part fails the tests, the Contractor shall carry out further repair, replacement or making good, as the case may be, until that part of the Facilities passes such tests. The tests shall be agreed upon by the Employer and the Contractor.

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

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

Upon correction of the defects in the Facilities or any part thereof by repair/replacement, such repair/replacement shall have the Defect Liability Period extended by a period mentioned in GCC Sub-Clause 27.2 from the time such replacement/repair of the facilities or any part thereof, unless otherwise specified in SCC.

- 27.9 Except as provided in GCC Clauses 27 and 33, the Contractor shall be under no liability whatsoever and howsoever arising, and whether under the Contract or at law, in respect of defects in the Facilities or any part thereof, the Plant, design, or engineering, or work executed that appear after successful completion of Defect Liability Period of the Facilities or any part thereof, except where such defects are the result of the gross negligence, fraud, criminal, or willful action of the Contractor.

- 27.10 In addition, any such component of the Facilities and during the period of time as may be specified in the SCC shall be subject to an extended Defect Liability Period. Such obligation of the Contractor shall be in addition to the Defect Liability Period specified under GCC sub clause 27.2.

- 27.11 At successful completion of the Defect Liability Period, the Contractor's Liability ceases except for latent defects.

Within 28 (twenty-eight) days after the successful completion of the Defect-Liability Period for the Facilities or part thereof, as the case

may be, which shall include fulfillment of all his obligations by the Contractor under the Contract for the defects, the Employer shall issue to the Contractor, a certificate to that effect (referred to as 'Defects Liability Certificate').

The Contractor's liability for latent defects warranty shall be limited to period of five (05) years from the end of Defect Liability Period. Latent defects are such defects for which it is established by the Employer that the defect was discovered/ noticed after the date of expiration of the Defect Liability Period, but was existing before the expiration of Defect Liability Period and the defects were lying within the material or arising out of design deficiency. Contractor's liability shall be limited to repair and replacement of defective parts and shall cease upon end of five years from the date of completion of Defect Liability Period or end of availability & reliability period whichever is later.

The provisions contained in the clause will not be applicable:

- (a) If the Employer has not operated the equipment according to generally approved industrial practices and in accordance with the conditions of operation specified in the Contract by the Contractor and in accordance with operating manuals, if any.
- (b) In case of normal wear and tear normally applicable to equipment of the type supplied as determined by the Employer. Further, it will not apply to consumables and wearing parts.

28. Functional Guarantees

- 28.1 The Contractor guarantees that during the Guarantee Test, the Facilities and all parts thereof shall attain the Functional Guarantees specified in the Appendix (Functional Guarantees) to the Contract Agreement, subject to, and upon the conditions therein specified.
- 28.2 If, for reasons attributable to the Contractor, the minimum level of the Functional Guarantees specified in the Appendix (Functional Guarantees) to the Contract Agreement are not met either in whole or in part, the Contractor shall at its cost and expense make such changes, modifications, and/or additions to the Plant or any part thereof as may be necessary to meet at least the minimum level of such Guarantees. The Contractor shall notify the Employer upon completion of the necessary changes, modifications, and/or additions, and shall request the Employer to repeat the Guarantee Test until the minimum level of the Guarantees has been met. If the Contractor eventually fails to meet the minimum level of Functional Guarantees, the Employer may consider termination of the Contract, pursuant to GCC Sub-clause 42.2.2 and recover the payments already made to the Contractor.
- 28.3 If, for reasons attributable to the Contractor, the Functional Guarantees specified in the Appendix (Functional Guarantees) to the Contract Agreement are not attained either in whole or in part, but the minimum level of the Functional Guarantees specified in the said Appendix to the Contract Agreement is met, the Contractor shall, at the Contractor's option, either
 - (a) make such changes, modifications, and/or additions to the Facilities or any part thereof that are necessary to attain the Functional Guarantees within a mutually agreed time at its cost and expense, and shall request the Employer to repeat the Guarantee Test or
 - (b) pay liquidated damages to the Employer in respect of the

failure to meet the Functional Guarantees in accordance with the provisions in the Appendix (Functional Guarantees) to the Contract Agreement.

- 28.4 In case the Employer accepts the Plant or equipment after levy of liquidated damages pursuant to GCC Sub-Clause 28.3(b), the payment of liquidated damages under GCC sub clause 28.3, up to the limitation of liability specified in the Appendix (Functional Guarantees) to the Contract Agreement, shall completely satisfy the Contractor's guarantees under GCC sub clause 28.3, and the Contractor shall have no further liability whatsoever to the Employer in respect thereof. Upon the payment of such liquidated damages by the Contractor, the Project Manager shall issue the Operational Acceptance Certificate for the Facilities or any part thereof in respect of which the liquidated damages have been so paid.

**29. Patent
Indemnity**

- 29.1 The Contractor shall, subject to the Employer's compliance with GCC sub clause 29.2, indemnify and hold harmless the Employer, including Employer's Personnel and Project Manager, and its employees and officers from and against any and all suits, actions, or administrative proceedings, claims, demands, losses, damages, costs, and expenses of whatsoever nature, including attorney's fees and expenses, which the Employer may suffer as a result of any infringement or alleged infringement of any patent, utility model, registered design, trademark, copyright, or other intellectual property right registered or otherwise existing at the date of the Contract by reason of (a) the installation of the Facilities by the Contractor or the use of the Facilities in the country where the Site is located, and (b) the sale of the products produced by the Facilities in any country.

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

- 29.2 If any proceedings are brought or any claim is made against the Employer, including Employer's Personnel and Project Manager, arising out of the matters referred to in GCC sub clause 29.1, the Employer shall promptly give the Contractor a notice thereof, and the Contractor may at its own expense and in the Employer's name conduct such proceedings or claim and any negotiations for the settlement of any such proceedings or claim.

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

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

- 29.3 The Employer shall indemnify and hold harmless the Contractor and its employees, officers, and Subcontractors from and against any

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

30. Limitation of Liability

30.1 Except in cases of criminal negligence or willful misconduct,

- (a) the Contractor shall not be liable to the Employer, whether in contract, tort, or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, provided that this exclusion shall not apply to any obligation of the Contractor to pay liquidated damages to the Employer, and
- (b) the aggregate liability of the Contractor to the Employer, whether under the Contract, in tort or otherwise, shall not exceed a multiple of the Contract Price specified in the SCC or, if a multiple is not so specified, the total Contract Price, provided that this limitation shall not apply to the cost of repairing or replacing defective equipment, or to any obligation of the Contractor to indemnify the Employer with respect to patent infringement.

30.2 Exclusive Remedies

The Employer and the Contractor intend that their respective rights, obligations and liabilities as provided for in these conditions shall alone govern their rights under the Contract and in relation to the Works/ Facilities.

Accordingly, the remedies provided under the Contract are to the exclusion of any other remedy that either may have against the other under the laws applicable as per GCC sub clause governing the Contract.

G. Risk Distribution

31. Transfer of Ownership

31.1 Ownership of the Plant (including spare parts) to be imported by the Employer into the country where the Site is located shall be transferred to the Employer upon loading on to the mode of transport to be used to convey the Plant from the port of disembarkation in India or from Contractor's/ Manufacturer's works/warehouse, as the case may be, to Site and upon endorsement of the dispatch documents in favour of the Employer.

31.2 Ownership of the Plant (including spare parts) procured in India, irrespective of the country of origin, shall be transferred to the Employer upon loading on to the mode of transport to be used to convey the Plant from the Contractor's/ Manufacturer's works/warehouse or directly from port of disembarkation (in case of Plant imported by the Contractor) to the Site and upon endorsement of the dispatch documents in favour of the Employer, except if otherwise specified in SCC.

- 31.3 Ownership of the Contractor's Equipment used by the Contractor and its Subcontractors in connection with the Contract shall remain with the Contractor or its Subcontractors.
- 31.4 Ownership of any Plant (including spare parts) in excess of the requirements for the Facilities shall revert to the Contractor upon Completion of the Facilities or at such earlier time when the Employer and the Contractor agree that the Plant in question are no longer required for the Facilities provided quantity of any Plant including spare parts) as specifically stipulated in the Contract shall be the property of the Employer whether or not incorporated in the Facilities.
- 31.5 Notwithstanding the transfer of ownership of the Plant, the responsibility for care and custody thereof together with the risk of loss or damage thereto shall remain with the Contractor pursuant to GCC Clause 32 (Care of Facilities) hereof until Completion and Taking Over of the Facilities or the part thereof in which such Plant are incorporated.

32. Care of Facilities

- 32.1 (a) The Contractor shall be responsible for the care and custody of the Facilities or any part thereof until the date of Completion and Taking Over of the Works pursuant to GCC Clause 25 or, where the Contract provides for Completion of the Works in parts, until the date of Completion and Taking Over of the relevant part.
- (b) The Contractor shall make good at its own cost any loss or damage that may occur to the Facilities or the relevant part thereof from any cause whatsoever during the period mentioned in (a) above.
- (c) The Contractor shall also be responsible for any loss or damage to the Facilities caused by the Contractor or its Subcontractors in the course of any work carried out, pursuant to GCC Clause 27.
- (d) If the Contract is terminated in accordance with the Contract or otherwise, the Contractor shall cease to be responsible for the care of the Facilities from the date of termination.
- (e) After responsibility has accordingly passed to the Employer, the Contractor shall take responsibility for the care of any work which is outstanding on the date of Completion, until this outstanding work has been completed.
- (f) The Contractor shall be liable for any loss or damage caused by the Contractor to the Facilities, after the issue of a Completion/ Taking-Over Certificate. The Contractor shall also be liable for any loss or damage, which occurs after the issue of a Completion/ Taking-Over Certificate and which arose from an event which occurred before the issue of this Completion/ Taking-Over Certificate, for which the Contractor was liable.
- (g) Notwithstanding the foregoing, the Contractor shall not be liable for any loss or damage to the Facilities or that part thereof caused by reason of any of the matters specified or referred to in paragraphs (a), (b), (c), (d) and (e) of GCC sub clauses 32.2 and 38.1.
- 32.2 If any loss or damage occurs to the Facilities or any part thereof by reason of

- (a) insofar as they relate to the country where the Site is located, nuclear reaction, nuclear radiation, radioactive contamination, pressure wave caused by aircraft or other aerial objects, or any other occurrences that an experienced contractor could not reasonably foresee, or if reasonably foreseeable could not reasonably make provision for or insure against, insofar as such risks are not normally insurable on the insurance market and are mentioned in the general exclusions of the policy of insurance, including War Risks and Political Risks, taken out under GCC Clause 34 hereof; or
- (b) any use or occupation by the Employer or any third party other than a Subcontractor, authorized by the Employer of any part of the Facilities; or
- (c) fault, error, defect or omission in any element of the design of the Facilities/ Works by the Employer or which may be contained in the Technical Specifications and Drawings (and which an experienced contractor exercising due care would not have discovered when examining the Site and the Technical Specification and Drawings before submitting the Bid), other than design carried out by the Contractor in accordance with the Contractor's obligations under the Contract;
- (d) any operation of the forces of nature (other than those allocated to the Contractor in the Contract) which is unforeseeable (not reasonably foreseeable by an experienced contractor) or against which an experienced contractor could not reasonably have been expected to have taken adequate preventative precautions including insurance; or
- (e) arising out of any statutory/legal notification arising from the governing law as per GCC sub clause 5.1, which is obligations of the Employer under the Contract.

the Employer shall pay to the Contractor all sums payable in respect of the Facilities executed, notwithstanding that the same be lost, destroyed, or damaged. If the Employer requests the Contractor in writing to make good any loss or damage to the Facilities thereby occasioned, the Contractor shall make good the same at the cost of the Employer in accordance with GCC Clause 39. If the Employer does not request the Contractor in writing to make good any loss or damage to the Facilities thereby occasioned, the Employer shall either request a change in accordance with GCC Clause 39, excluding the performance of that part of the Facilities thereby lost, destroyed or damaged, or, where the loss or damage affects a substantial part of the Facilities, the Employer shall terminate the Contract pursuant to GCC sub clause 42.1 hereof.

- 32.3 The Contractor shall be liable for any loss of or damage to any Contractor's temporary facilities, Contractor's Equipment, or any other property of the Contractor used or intended to be used for purposes of the Facilities, except (i) as mentioned in GCC sub clause 32.2, and (ii) where such loss or damage arises by reason of any of the matters specified in GCC sub clauses 32.2 (b) and (c) and 38.1.
- 32.4 With respect to any loss or damage caused to the Facilities or any part thereof or to the Contractor's Equipment by reason of any of the matters specified in GCC sub clause 38.1, the provisions of GCC sub

clause 38.3 shall apply.

32.5 In addition, the provisions, if any, specified in **SCC** shall also be applicable.

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

33.1 Subject to GCC sub clause 33.3, the Contractor shall indemnify and hold harmless the Employer and its employees and officers from and against any and all suits, actions, or administrative proceedings, claims, demands, losses, damages, costs, and expenses of whatsoever nature, including attorney's fees and expenses, in respect of the death or injury of any person or loss of or damage to any property including the Facilities whether accepted or not, arising in connection with the supply and installation of the Facilities and by reason of the negligence, including breach of statutory duty and defective design, material or workmanship, of the Contractor or its Subcontractors, or their employees, officers, or agents, except any injury, death, or property damage caused by the negligence of the Employer, its contractors, employees, officers, or agents.

33.2 If any proceedings are brought or any claim is made against the Employer that might subject the Contractor to liability under GCC sub clause 33.1, the Employer shall promptly give the Contractor a notice thereof and the Contractor may at its own expense and in the Employer's name conduct such proceedings or claim and any negotiations for the settlement of any such proceedings or claim.

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

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

33.3 The Employer shall indemnify and hold harmless the Contractor and its employees, officers, and Subcontractors from any liability for loss of or damage to property of the Employer, other than the Facilities not yet taken over, that is caused by fire, explosion, or any other perils, in excess of the amount recoverable from insurances procured under GCC Clause 34, provided that such fire, explosion, or other perils were not caused by any act or failure of the Contractor.

33.4 The party entitled to the benefit of an indemnity under this GCC Clause 33 shall take all reasonable measures to mitigate any loss or damage which has occurred. If the party fails to take such measures, the other party's liabilities shall be correspondingly reduced.

34. Insurance

34.1 To the extent specified in the Appendix (Insurance Requirements) to the Contract Agreement, the Contractor shall at its expense take out and maintain in effect, or cause to be taken out and maintained in effect, during the performance of the Contract, the insurances set forth below in the sums and with the deductibles and other conditions specified in the said Appendix. Whenever required by the Employer, the Contractor shall produce the insurance policies which the Contractor is required to effect under the Contract. As each premium is paid, the Contractor shall promptly submit either a copy of each receipt

of payment to the Employer (with a copy to the Project Manager), or confirmation from the insurers that the premium has been paid. Further, the insurances required to be provided under this Clause are the minimum required by the Employer, and the Contractor may, at the Contractor's own cost, add such other insurances that the Contractor may deem prudent. The identity of the insurers and the form of the policies shall be subject to the approval of the Employer, who should not unreasonably withhold such approval.

(A) Marine Cargo/ Transit Insurance During Transport

(I) (a) Marine Cargo policy for imported Plant (including spares) .

The Contractor shall take the Marine Cargo Policy for Plant (including spares) to be supplied from abroad wherein export/import including inland transit is involved for the movement of the Plant (including spares). The policy shall cover movement of Plant (including spares) from the Contractor's/ manufacturer's works to the project's warehouse at final destination Site. The policy shall cover all risk for loss or damage that may occur during transit of Plant (including spares) from the Contractor/ manufacturer's works or stores until arrival at project's warehouse/ store at final destination Site. Institute Cargo Clause (ICC) 'A' along with War & Strike Riots & Civil Commotion (SRCC) cover shall be taken.

(I)(b)Transit Insurance Policy for indigenous Plant (including spares)

Transit Insurance Policy shall be taken wherein only inland transit is involved for the movement of Plant (including spares) supplied from within country where Site is located. The policy shall cover movement of Plant (including spares) from the Contractor's/ manufacturer's works to the project's warehouse at final destination Site. Inland Transit Clause (ITC) 'A' along with War & Strike Riots & Civil Commotion (SRCC) cover shall be taken.

(II) If during the execution of Contract, the Employer requests the Contractor to take any other add-on cover(s)/ supplementary cover(s) in aforesaid insurance, in such a case, the Contractor shall promptly take such add-on cover(s)/ supplementary cover(s) and the charges towards such premium for such add-on cover(s)/ supplementary cover(s) shall be reimbursed to the Contractor on submission of documentary evidence of payment to the Insurer. In the normal course the charges towards premium for such add-on cover(s)/ supplementary cover(s) are not included in the Contract Price.

(III) The Contractor shall take the policy in the joint names of Employer and the Contractor. The policy shall indicate the Employer as the beneficiary. However, if the Contractor is having an open policy for its line of business, it should obtain an endorsement of the open cover policy from the Insurer indicating that the dispatches against this Contract are duly covered under its open policy and include the name of the Employer as jointly Insured in the endorsements to the open policy

(B) Erection/ Construction/ Installation All Risk Policy/Contractor All Risk Policy:

- (I) The policy shall cover all physical loss or damage to the Facilities at Site during storage, erection and commissioning covering all the perils as provided in the policy as a basic cover and the add on covers as mentioned at Sl. No. (III) below.
- (II) The Contractor shall take the policy in the joint name of Employer and the Contractor. The policy shall indicate Employer as the beneficiary. The policy shall be kept valid till the date of the Completion/ Taking Over of the Facilities and the period of the coverage shall be determined with the approval of the Employer.

If the Completion/ Taking Over is achieved earlier than the period of policy considered, the Contractor shall obtain the refund as per provisions of the policy and pass on the benefit to Employer. In case no refund is payable by the Insurer then the certificate to that effect shall be submitted to Employer..

- (III) The following add-on covers shall also be taken by the Contractor:
 - a. Earthquake
 - b. Terrorism
 - c. Escalation cost (approximately @10% of sum insured on annual basis)
 - d. Extended Maintenance cover for Defect Liability Period
 - e. Design Defect
 - f. Other add-on covers viz., 50-50 clause, 72 hours clause, loss minimization clause, waiver of subrogation clause (for projects of more than Rs. 100 crores, cover for offsite storage/fabrication (over Rs. 100 crores).
 - g. Third Party Liability cover with cross Liability within Geographical limits of India as Add-on cover to the basic EAR cover: The third party liability add-on cover shall cover bodily injury or death suffered by third parties (including the Employer's personnel) and loss of or damage to property (including the Employer's property and any parts of the Facilities which have been accepted by the Employer) occurring in connection with supply and installation of the Facilities.
- (IV) As per GCC Clause 34.8 below, the cost of insurance premium is to be reimbursed to the Contractor for Employer-Supplied Materials (ESM), if any, for which the Insurer is to be finalized by the Contractor as detailed therein. Alternatively, the Contractor may take a single policy covering the entire cost of the project including the cost of ESM. For this purpose, the Contractor shall submit documentary evidence for the premium paid for the entire project to the Employer and Employer shall reimburse to the Contractor the proportion of premium equal to value of ESM to total sum insured.
- (V) If during the execution of Contract, the Employer requests the Contractor to take any other add-on cover(s)/ supplementary

cover(s) in aforesaid insurance, in such a case, the Contractor shall promptly take such add-on cover(s)/ supplementary cover(s) and the charges towards such premium for such add-on cover(s)/ supplementary cover(s) shall be reimbursed to the Contractor on submission documentary evidence of payment to the Insurance company. Therefore, charges towards premium for such add-on cover(s)/ supplementary cover(s) are not included in the Contract Price.

(C) Automobile Liability Insurance

Covering use of all vehicles used by the Contractor or its Subcontractors, whether or not owned by them, in connection with the execution of the Contract duly insured as per RTA act. Further the Contractor or its Subcontractors may also take comprehensive policy (own damage plus third party liability) of each individual vehicles deployed in the project on their own discretion in their own name to protect their own interest..

(D) Workmen Compensation Policy:

(I) Workmen Compensation Policy shall be taken by the Contractor in accordance with the statutory requirement applicable in India. The Contractor shall ensure that all the workmen employed by the Contractor or its Subcontractors for the project are adequately covered under the policy.

(II) The policy may either be project specific covering all men of the Contractor and its Subcontractors. The policy shall be kept valid till the date of Operational Acceptance of the project.

Alternatively, if the Contractor has an existing 'Workmen Compensation Policy' for all its employees including that of the Subcontractor(s), the Contractor must include the interest of the Employer for this specific Project in its existing 'Workmen Compensation Policy'.

(III) Without relieving the Contractor of its obligations and responsibilities under this Contract, before commencing work the Contractor shall insure against liability for death of or injury to persons employed by the Contractor including liability by statute and at common law. The insurance cover shall be maintained until all work including remedial work is completed including the Defect Liability Period. The insurance shall be extended to indemnify the Principal for the Principal's statutory liability to persons employed by the Contractor.

The Contractor shall also ensure that each of its Subcontractors shall effect and maintain insurance on the same basis as the 'Workmen Compensation Policy' effected by the Contractor.

(E) Employer's Liability

In accordance with the statutory requirements applicable in any country where the Contract or any part thereof is executed.

(F) Contractor's Plant and Machinery (CPM) Insurance.

The Contractor may insure the Contractor's Plant and Machinery as it considers appropriate. The Employer (including without limitation any consultant, servant, agent or employee of the Employer) shall not in any circumstances be liable to the

Contractor for any loss of or damage to any of the Contractor's Equipment or for any losses, liabilities, costs, claims, actions or demands which the Contractor may incur or which may be made against it as a result of or in connection with any such loss or damage.

(G) Other Insurances

Such other insurances as may be specifically agreed upon by the parties hereto as listed in the Appendix (Insurance Requirements) to the Contract Agreement.

- 34.2 The Employer shall be named as co-insured under all insurance policies taken out by the Contractor pursuant to GCC sub clause 34.1, except for the Third Party Liability, Workmen' Compensation, and Employer's Liability Insurances, and the Contractor's Subcontractors shall be named as co-insureds under all insurance policies taken out by the Contractor pursuant to GCC sub clause 34.1 except for the Marine Cargo/ Transit Insurance During Transport, Workers' Compensation, and Employer's Liability Insurances. All insurer's rights of subrogation against such co-insureds for losses or claims arising out of the performance of the Contract shall be waived under such policies.
- 34.3 The Contractor shall, in accordance with the provisions of the Appendix (Insurance Requirements) to the Contract Agreement, deliver to the Employer certificates of insurance or copies of the insurance policies as evidence that the required policies are in full force and effect. The certificates shall provide that no less than 21 days' notice shall be given to the Employer by insurers prior to cancellation or material modification of a policy.
- 34.4 The Contractor shall ensure that, where applicable, its Subcontractor(s) shall take out and maintain in effect adequate insurance policies for their personnel and vehicles and for work executed by them under the Contract, unless such Subcontractors are covered by the policies taken out by the Contractor.
- 34.5 The Employer shall at its expense take out and maintain in effect during the performance of the Contract those insurances, if any, specified to be taken by the Employer, in the Appendix (Insurance Requirements) to the Contract Agreement, in the sums and with the deductibles and other conditions specified in the said Appendix. The Contractor and the Contractor's Subcontractors shall be named as co-insureds under all such policies. All insurers' rights of subrogation against such co-insureds for losses or claims arising out of the performance of the Contract shall be waived under such policies. The Employer shall deliver to the Contractor satisfactory evidence that the required insurances are in full force and effect. The policies shall provide that not less than 21 days' notice shall be given to the Contractor by all insurers prior to any cancellation or material modification of the policies. If so requested by the Contractor, the Employer shall provide copies of the policies taken out by the Employer under this GCC sub clause 34.5.
- 34.6 If the Contractor fails to take out and/or maintain in effect the insurances referred to in GCC sub clause 34.1, the Employer may take out and maintain in effect any such insurances and may from time to time deduct from any amount due the Contractor under the Contract any premium that the Employer shall have paid to the insurer, or may otherwise recover such amount as a debt due from the Contractor. If the Employer fails to take out and/or maintain in effect the insurances

referred to in GCC 34.5, the Contractor may take out and maintain in effect any such insurances and may from time to time deduct from any amount due the Employer under the Contract any premium that the Contractor shall have paid to the insurer, or may otherwise recover such amount as a debt due from the Employer. If the Contractor fails to or is unable to take out and maintain in effect any such insurances, the Contractor shall nevertheless have no liability or responsibility towards the Employer, and the Contractor shall have full recourse against the Employer for any and all liabilities of the Employer herein.

- 34.7 Unless otherwise provided in the Contract, the Contractor shall prepare and conduct all and any claims made under the policies effected by it pursuant to this GCC Clause 34, and the monies payable by any insurers under all the insurance except Third Party Liability Insurance, Workers' Compensation, and Employer's Liability, shall be paid to the joint account of the Employer and the Contractor as mutually agreed and such amounts paid shall be apportioned between the Employer and the Contractor in accordance with the respective responsibilities under the Contract. The Employer shall give to the Contractor all such reasonable assistance as may be required by the Contractor. With respect to insurance claims in which the Employer's interest is involved, the Contractor shall not give any release or make any compromise with the insurer without the prior written consent of the Employer. With respect to insurance claims in which the Contractor's interest is involved, the Employer shall not give any release or make any compromise with the insurer without the prior written consent of the Contractor.
- 34.8 Further all equipment and materials being supplied by Employer for the installation/ erection/ construction (as per Technical Specification/ Employer's Requirement or as may be stated elsewhere in the Contract including Appendix (Insurance Requirements) to the Contract Agreement) in the Facilities, shall be kept insured by the Contractor against any loss, damage, pilferage, theft, fire, etc. from the point of unloading up to the time of taking over by Employer including handling, transportation, storage, erection/ installation/ construction, testing and commissioning etc. The premium paid to the Insurance company by the Contractor for such insurance shall be reimbursed by Employer to the Contractor. The Contractor shall obtain competitive quotation for such insurance and shall take prior approval from Employer before taking the insurance. The insurable value of the equipment being supplied by Employer shall be intimated to the Contractor for arranging the insurance
- 34.9 It will be the responsibility of the Contractor to lodge, pursue and settle all claims with the insurer in case of any damage, loss, theft, pilferage or fire etc. during execution of Contract, and Employer shall be kept informed about it. The Contractor shall replace the lost/damaged materials promptly irrespective of the settlement of the claims by the underwriters/ insurer and ensure that the work progress is as per agreed schedules. The losses, if any, in such replacement will have to be borne by the Contractor.
- 34.10 If either the Contractor or the Employer fails to comply with any condition of the insurances effected under the Contract, the Party so failing to comply shall indemnify the other Party against all losses and claims (including legal fees and expenses) arising from such failure.
- 34.11 The Contractor shall also be responsible for the following:
(a) notifying the insurers of any changes in the nature, extent or

- programme for the execution of the Works; and
(b) the adequacy and validity of the insurances in accordance with the Contract at all times during the performance of the Contract

34.12 Injury to persons and damage to property

The Contractor shall insure, in the joint names of the Contractor and the Employer, against liabilities for death or injury to any person, or loss of or damage to any property (other than the Works) arising out of the performance of the Contract and occurring before Completion/ Taking Over.

The insurance policy shall include a cross liability clause such that the insurance shall apply to the Contractor and the Employer as separate insureds.

Such insurance shall be effected before the Contractor begins any work on the Site and shall remain in force until the Completion/ Taking Over and shall be for not less than the amount specified in SCC (if not specified, the amount agreed with the Employer).

34.13 Injury to employees

The Contractor shall effect and maintain insurance against liability for claims, damages, losses and expenses (including legal fees and expenses) arising out of the execution of the Works in respect of injury, sickness, disease or death of any person employed by the Contractor or any of the Contractor's other personnel.

The Employer and the Project Manager shall also be indemnified under the policy of insurance, except that this insurance may exclude losses and claims to the extent that they arise from any act or neglect of the Employer or of the Employer's Personnel.

The insurance shall be maintained in full force and effect during the whole time that the Contractor's Personnel are assisting in the execution of the Works. For any person employed by a Subcontractor, the insurance may be effected by the Subcontractor, but the Contractor shall be responsible for the Subcontractor's compliance with this Sub-Clause.

34.14 Professional Indemnity Insurance

To the extent, if any, that the Contractor is responsible for the design of Facilities or part thereof, and/or any other design under the Contract, and consistent with other relevant provisions in the Contract, the Contractor shall effect and maintain professional indemnity insurance against liability arising out of any act, error or omission by the Contractor in carrying out the Contractor's design obligations in an amount not less than that specified in the SCC (if not specified, the amount agreed with the Employer); and such professional indemnity insurance shall also indemnify the Contractor against liability arising out of any act, error or omission by the Contractor in carrying out the Contractor's design obligations under the Contract that results in the Facilities, or part thereof, when Completed, not being fit for the intended purpose(s). The Contractor shall maintain this insurance till successful completion of Defect Liability

34.15 Other insurances required by Laws and by local practice

The Contractor shall provide all other insurances required by the governing laws as per GCC sub clause 5.1, at the Contractor's own cost.

Other insurances required by local practice (if any) shall also be provided by the Contractor at the Contractor's own cost.

35. Unforeseen Conditions

- 35.1 If, during the execution of the Contract, the Contractor shall encounter on the Site any physical conditions other than climatic conditions, or artificial obstructions that could not have been reasonably foreseen prior to the date of the Contract Agreement by an experienced contractor on the basis of reasonable examination of the data relating to the Facilities including any data as to boring tests, provided by the Employer, and on the basis of information that it could have obtained from a visual inspection of the Site if access thereto was available, or other data readily available to it relating to the Facilities, and if the Contractor determines that it will in consequence of such conditions or obstructions incur additional cost and expense or require additional time to perform its obligations under the Contract that would not have been required if such physical conditions or artificial obstructions had not been encountered, the Contractor shall promptly, and before performing additional work or using additional Plant or Contractor's Equipment, notify the Project Manager in writing of
- (a) the physical conditions or artificial obstructions on the Site that could not have been reasonably foreseen;
 - (b) the additional work and/or Plant and/or Contractor's Equipment required, including the steps which the Contractor will or proposes to take to overcome such conditions or obstructions;
 - (c) the extent of the anticipated delay;
 - (d) any unanticipated environmental risks or impacts that may arise; and
 - (d) the additional cost and expense that the Contractor is likely to incur.

On receiving any notice from the Contractor under this GCC sub clause 35.1, the Project Manager shall promptly consult with the Employer and Contractor and decide upon the actions to be taken to overcome the physical conditions or artificial obstructions encountered. Following such consultations, the Project Manager shall instruct the Contractor, with a copy to the Employer, of the actions to be taken.

- 35.2 Any reasonable additional cost and expense incurred by the Contractor in following the instructions from the Project Manager to overcome such physical conditions or artificial obstructions referred to in GCC sub clause 35.1 shall be paid by the Employer to the Contractor as an addition to the Contract Price.
- 35.3 If the Contractor is delayed or impeded in the performance of the Contract because of any such physical conditions or artificial obstructions referred to in GCC sub clause 35.1, the Time for Completion shall be extended in accordance with GCC Clause 40.

36. Change in Laws and Regulations

- 36.1 If, after the date 7 days prior to the date of Bid submission, in India, any law, regulation, ordinance, order or by-law having the force of law is enacted, promulgated, abrogated, or changed, which shall be

deemed to include any change in interpretation or application by the competent authorities, that subsequently affects the costs and expenses of the Contractor and/or the Time for Completion, the Contract Price shall be correspondingly increased or decreased, and/or the Time for Completion shall be reasonably adjusted to the extent that the Contractor has thereby been affected in the performance of any of its obligations under the Contract and it relates to the execution of the works for the Facilities. Notwithstanding the foregoing, such additional or reduced costs shall not be separately paid or credited if the same has already been accounted for in the price adjustment provisions where applicable, in accordance with the SCC, pursuant to GCC sub clause 11.2.

37. Force Majeure

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

- (a) war, hostilities, or warlike operations whether a state of war be declared or not, invasion, act of foreign enemy and civil war;
- (b) rebellion, revolution, insurrection, mutiny, usurpation of civil or military government, conspiracy, riot, civil commotion, and terrorist acts;
- (c) confiscation, nationalization, mobilization, commandeering or requisition by or under the order of any government or de jure or de facto authority or ruler or any other act or failure to act of any local state or national government authority;
- (d) strike, sabotage, lockout, embargo, import restriction, port congestion, lack of usual means of public transportation and communication, industrial dispute, shipwreck, shortage or restriction of power supply, quarantine, and plague or any other epidemic/ pandemic;
- (e) earthquake, landslide, volcanic activity, fire, flood or inundation, tidal wave, typhoon or cyclone, hurricane, storm, lightning, or other inclement weather condition, nuclear, and pressure waves or other natural or physical disaster; and
- (f) shortage of labor, materials, or utilities where caused by circumstances that are themselves Force Majeure.

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

37.3 The party who has given such notice shall be excused from the performance or punctual performance of its obligations under the Contract for so long as the relevant event of Force Majeure continues and to the extent that such party's performance is prevented, hindered, or delayed. The Time for Completion shall be extended in accordance with GCC Clause 40.

37.4 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 fulfill its or their obligations under the Contract, but without prejudice to either party's right to terminate

the Contract under GCC sub clauses 37.6 and 38.5.

37.5 No delay or nonperformance by either party hereto caused by the occurrence of any event of Force Majeure shall

- (a) constitute a default or breach of the Contract; or
- (b) give rise to any claim for damages or additional cost or expense occasioned thereby, subject to GCC sub clauses 32.2, 38.3 and 38.4

if and to the extent that such delay or nonperformance is caused by the occurrence of an event of Force Majeure.

37.6 If the performance of the Contract is substantially prevented, hindered, or delayed for the period specified in SCC or, if not specified, a single period of more than 90 days or an aggregate period of more than 180 days on account of one or more events of Force Majeure during the currency of the Contract, the parties will attempt to develop a mutually satisfactory solution to proceed with the execution of works under the Contract, failing which, to terminate the Contract with mutual agreement under GCC sub clause 38.5.

37.7 In the event of termination pursuant to GCC sub clause 37.6, the rights and obligations of the Employer and the Contractor shall be as specified in GCC sub clauses 42.1.2 and 42.1.3.

37.8 Notwithstanding GCC sub clause 37.5, Force Majeure shall not apply to any obligation of the Employer to make payments due to the Contractor as per the Contract.

38. War Risks

38.1 "War Risks" shall mean any event specified in paragraphs (a) and (b) of GCC sub clause 37.1 and any explosion or impact of any mine, bomb, shell, grenade, or other projectile, missile, munitions or explosive of war, occurring or existing in India.

38.2 Notwithstanding anything contained in the Contract, the Contractor shall have no liability whatsoever for or with respect to

- (a) destruction of or damage to Facilities, Plant, or any part thereof;
- (b) destruction of or damage to property of the Employer or any third party; or
- (c) injury or loss of life

if such destruction, damage, injury or loss of life is caused by any War risks, and the Employer shall indemnify and hold the Contractor harmless from and against any and all claims, liabilities, actions, lawsuits, damages, costs, charges, or expenses arising in consequence of or in connection with the same.

38.3 If the Facilities or any Plant or Contractor's Equipment or any other property of the Contractor used or intended to be used for the purposes of the Facilities shall sustain destruction or damage by reason of any War Risks, the Employer shall pay the Contractor for

- (a) any part of the Facilities or the Plant so destroyed or damaged to the extent not already paid for by the Employer and so far as may be required by the Employer, and as may be necessary for completion of the Facilities;
- (b) replacing or making good any Contractor's Equipment or other

property of the Contractor so destroyed or damaged; and

- (c) replacing or making good any such destruction or damage to the Facilities or the Plant or any part thereof.

If the Employer does not require the Contractor to replace or make good any such destruction or damage to the Facilities, the Employer shall either request a change in accordance with GCC Clause 39, excluding the performance of that part of the Facilities thereby destroyed or damaged or, where the loss, destruction, or damage affects a substantial part of the Facilities, shall terminate the Contract, pursuant to GCC sub clause 42.1.

If the Employer requires the Contractor to replace or make good on any such destruction or damage to the Facilities, the Time for Completion shall be extended in accordance with GCC 40.

- 38.4 Notwithstanding anything contained in the Contract, the Employer shall pay the Contractor for any increased costs or incidentals to the execution of the Contract that are in any way attributable to, consequent on, resulting from, or in any way connected with any War Risks, provided that the Contractor shall as soon as practicable notify the Employer in writing of any such increased cost.
- 38.5 If during the performance of the Contract any War Risks shall occur that financially or otherwise materially affect the execution of the Contract by the Contractor, the Contractor shall use its reasonable efforts to execute the Contract with due and proper consideration given the safety of its and its Subcontractors' personnel engaged in the work on the Facilities, provided, however, that if the execution of the work on the Facilities becomes impossible or is substantially prevented for a single period of more than ninety (90) days or an aggregate period of more than one hundred and eighty (180) days on account of any War Risks, the parties will attempt to develop a mutually satisfactory solution to proceed with execution of the Contract, or terminate to Contract with mutual agreement. .
- 38.6 In the event of termination pursuant to GCC sub clauses 38.3 or 38.5, the rights and obligations of the Employer and the Contractor shall be specified in GCC sub clauses 42.1.2 and 42.1.3.

H. Change in Contract Elements

39. Change in the Facilities

39.1 Introducing a Change

39.1.1 Subject to GCC sub clauses 39.2.5 and 39.2.7, the Employer shall have the right to propose, and subsequently require, that the Project Manager order the Contractor from time to time during the performance of the Contract to make any change, modification, addition, or deletion to, in or from the Facilities hereinafter called "Change" (also referred to as "Variation"), provided that such Change falls within the general scope of the Facilities and does not constitute unrelated work and that it is technically practicable, taking into account both the state of advancement of the Facilities and the technical compatibility of the Change envisaged with the nature of the Facilities as specified in the Contract.

39.1.2 The Contractor may from time to time during its performance of the Contract propose to the Employer with a copy to the Project Manager, any Change that the Contractor considers necessary or desirable to improve the quality, efficiency, or safety of the Facilities. The Employer may at its discretion approve or reject any Change proposed by the Contractor, provided that the Employer shall approve any Change proposed by the Contractor to ensure the safety of the Facilities.

39.1.3 Notwithstanding GCC sub clauses 39.1.1 and 39.1.2, no change made necessary because of any default of the Contractor in the performance of its obligations under the Contract shall be deemed to be a Change, and such change shall not result in any adjustment of the Contract Price or the Time for Completion.

39.1.4 The procedure on how to proceed with and execute Changes is specified in GCC sub clauses 39.2 and 39.3, and further details, if any, provided in the Employer's Requirements shall be applicable.

39.2 Changes Originating from Employer

39.2.1 If the Employer proposes a Change pursuant to GCC sub clause 39.1.1, it shall send to the Contractor a "Request for Change Proposal," requiring the Contractor to prepare and furnish to the Project Manager as soon as reasonably practicable a "Change Proposal," which shall include the following:

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

39.2.2 Prior to preparing and submitting the "Change Proposal," the Contractor shall submit to the Project Manager an "Estimated Cost of Change Proposal".

Upon receipt of the Estimated Cost of Change Proposal, the Employer shall do one of the following:

- (a) accept the estimated cost with instructions to the Contractor to proceed with the preparation of the Change Proposal,
- (b) advise the Contractor of any part of its estimated cost of Change Proposal that is unacceptable and request the Contractor to review its estimate
- (c) advise the Contractor that the Employer does not intend to proceed with the Change.

39.2.3 Upon receipt of the Employer's instruction to proceed under

GCC sub clause 39.2.2 (a), the Contractor shall, with proper expedition, proceed with the preparation of the Change Proposal, in accordance with GCC sub clause 39.2.1.

39.2.4 The pricing of any Change shall, as far as practicable, be calculated in accordance with the rates and prices included in the Contract. If such rates and prices are inequitable, the parties thereto shall agree on specific rates for the valuation of the Change.

39.2.5 If before or during the preparation of the Change Proposal it becomes apparent that the aggregate effect of compliance therewith and with all other Change Orders that have already become binding upon the Contractor under this GCC Clause 39 would be to increase or decrease the Contract Price as originally set forth in Article 2 (Contract Price) of the Contract Agreement, unless specified otherwise in SCC, by more than 25% (twenty-five per cent), the Contractor may give a written notice of objection thereto prior to furnishing the Change Proposal as aforesaid. If the Employer accepts the Contractor's objection, the Employer and the Contractor shall agree on specific rates for valuation of the Change.

The Contractor's failure to so object shall neither affect its right to object to any subsequent requested Changes or Change Orders herein, nor affect its right to take into account, when making such subsequent objection, the percentage increase or decrease in the Contract Price that any Change not objected to by the Contractor represents.

39.2.6 If rates and prices of any change are not available in the Contract, the parties thereto shall agree on specific rates for the valuation of the Change. Upon receipt of the Change Proposal, the Employer and the Contractor shall mutually agree upon all matters therein contained. Within 21 days after such agreement, the Employer shall, if it intends to proceed with the Change, issue the Contractor with a Change Order.

If the Employer is unable to reach a decision within 21 days, it shall notify the Contractor with details of when the Contractor can expect a decision.

If the Employer decides not to proceed with the Change for whatever reason, it shall, within the said period of 21 days, notify the Contractor accordingly.

39.2.7 If the Employer and the Contractor cannot reach agreement on the price for the Change, an equitable adjustment to the Time for Completion, or any other matters identified in the Change Proposal, the Employer may nevertheless instruct the Contractor to proceed with the Change by issue of a "Pending Agreement Change Order."

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

issues under the Change Proposal.

If the parties cannot reach agreement within 60 days from the date of issue of the Pending Agreement Change Order, then the matter may be referred to Conciliation in accordance with the provisions of GCC Sub - Clause 45.1.

39.3 Changes Originating from Contractor

39.3.1 If the Contractor proposes a Change pursuant to GCC sub clause 39.1.2, the Contractor shall submit to the Project Manager a written "Application for Change Proposal," giving reasons for the proposed Change and including the information specified in GCC sub clause 39.2.1.

Upon receipt of the Application for Change Proposal, the parties shall follow the procedures outlined in GCC sub clauses 39.2.6 and 39.2.7.

39.4 The samples of procedures and forms for implementing changes in the Facilities during the performance of the Contract in accordance with the GCC Clause 39, as provided in Employer's Requirements shall generally be applicable.

40. Extension of Time for Completion

40.1 The Time(s) for Completion stated in the Appendix 4 (Time Schedule) to the Contract Agreement shall be extended if the Contractor is delayed or impeded in the performance of any of its obligations under the Contract by reason of any of the following:

- (a) any Change in the Facilities as provided in GCC Clause 39;
- (b) any occurrence of Force Majeure as provided in GCC Clause 37, unforeseen conditions as provided in GCC Clause 35, or other occurrence of any of the matters specified or referred to in paragraphs (a), (b) and (c) of GCC sub clause 32.2;
- (c) any suspension order given by the Employer under GCC Clause 41 hereof or reduction in the rate of progress pursuant to GCC sub clause 41.2; or
- (d) any changes in laws and regulations as provided in GCC Clause 36; or
- (e) any default or breach of the Contract by the Employer, or any activity, act or omission of the Employer, or the Project Manager, or any other contractors employed by the Employer; or
- (f) any other matter specifically mentioned in the Contract; or
- (g) any delay on the part of a sub-contractor, provided such delay is due to a cause for which the Contractor himself would have been entitled to an extension of time under this sub clause,

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

40.2 Except where otherwise specifically provided in the Contract, the Contractor shall submit to the Project Manager a notice of a claim

for an extension of the Time for Completion, together with particulars of the event or circumstance justifying such extension as soon as reasonably practicable after the commencement of such event or circumstance. As soon as reasonably practicable after receipt of such notice and supporting particulars of the claim, the Employer and the Contractor shall agree upon the period of such extension. Delayed submission of the notice of claim by the Contractor shall not be considered by the Project Manager for extension of Time for Completion. In the event that the Contractor does not accept the Employer's estimate of a fair and reasonable time extension, the Contractor shall be entitled to refer the matter to for Conciliation, pursuant to GCC sub clause 45.1.

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

In all cases where the Contractor has given a notice of a claim for an extension of time under GCC 40.2, the Contractor shall consult with the Project Manager in order to determine the steps (if any) which can be taken to overcome or minimize the actual or anticipated delay. The Contractor shall there after comply with all reasonable instructions, which the Project Manager shall give in order to minimize such delay. If compliance with such instructions shall cause the Contractor to incur extra costs and the Contractor is entitled to an extension of time under GCC 40.1, the amount of such extra costs shall be added to the Contract Price.

41. Suspension

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

If, by virtue of a suspension order given by the Project Manager, other than by reason of the Contractor's default or breach of the Contract, the Contractor's performance of any of its obligations is suspended for an aggregate period specified in **SCC** or , if not specified, aggregate period of more than 90 days, then at any time thereafter and provided that at that time such performance is still suspended, the Contractor may give a notice to the Project Manager requiring that the Employer shall, within 28 days of receipt of the notice, order the resumption of such performance or request and subsequently order a change in accordance with GCC Clause 39, excluding the performance of the suspended obligations from the Contract.

If the Employer fails to do so within such period, the Contractor may, by a further notice to the Project Manager, elect to treat the suspension, where it affects a part only of the Facilities, as a deletion of such part in accordance with GCC Clause 39 or, where it affects the whole of the Facilities, as termination of the Contract under GCC sub clause 42.1, in consultation with the Employer.

- 41.2 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 the Appendix (Terms and Procedures of Payment) to the Contract Agreement, or commits a substantial breach of the Contract, the Contractor may give a notice to the Employer that requires payment of such sum, 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, 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 28 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 reasonable access to the Site or other areas in accordance with GCC sub clause 10.2, 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 the Contract,
- then the Contractor may by 28 days' notice to the Employer suspend performance of all or any of its obligations under the Contract, or reduce the rate of progress.

41.3 If the Contractor's performance of its obligations is suspended, or the rate of progress is reduced pursuant to this GCC Clause 41, then the Time for Completion shall be extended in accordance with GCC sub clause 40.1, and any and all additional costs or expenses incurred by the Contractor as a result of such suspension or reduction shall be paid by the Employer to the Contractor in addition to the Contract Price, except in the case of suspension order or reduction in the rate of progress by reason of the Contractor's default or breach of the Contract.

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

42. Termination

42.1 Termination for Employer's Convenience

42.1.1 The Employer may at any time terminate the Contract for the Facilities, or part thereof, for any reason by giving the Contractor a notice of termination that refers to this GCC sub clause 42.1.

42.1.2 Upon receipt of the notice of termination under GCC sub clause 42.1.1, the Contractor shall, as may be applicable, either immediately or upon the date specified in the notice of termination,

- (a) cease all further work as per the notice of termination, 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 GCC sub clause 42.1.3,
 - (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 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.

42.1.3 In the event of termination of the Contract under GCC sub clause 42.1.1, the Employer shall pay to the Contractor the following amounts:

- (a) the Contract Price, properly attributable to the parts of the Facilities executed by the Contractor as of the date of termination;
- (b) the costs reasonably incurred by the Contractor in the removal of the Contractor's Equipment from the Site and in the repatriation of the Contractor's and its Subcontractors' personnel, based on documentary evidence;
- (c) any amounts to be paid by the Contractor to its Subcontractors in connection with the termination of any subcontracts, including any cancellation charges, based on documentary evidence;
- (d) costs incurred by the Contractor in protecting the Facilities and leaving the Site in a clean and safe condition pursuant to paragraph (a) of GCC sub clause 42.1.2, based on documentary evidence;
- (e) the cost of satisfying all other obligations, commitments and claims that the Contractor may in good faith have undertaken on its own or with third parties in connection with the Contract and that are

not covered by paragraphs (a) through (d) above,
based on documentary evidence; and

(f) any other factor/ element if specified in **SCC**.

42.2 Termination for Contractor's Default

42.2.1 The Employer, without prejudice to any other rights or remedies it may possess, may terminate the Contract forthwith in the following circumstances by giving a notice of termination and its reasons therefor to the Contractor, referring to this GCC sub clause 42.2:

- (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 or Insolvency Resolution Professional is appointed over any part of its undertaking or assets, or if the Contractor takes or suffers any other analogous action in consequence of debt;
- (b) if the Contractor assigns or transfers the Contract or any right or interest therein in violation of the provision of GCC Clause 43; and
- (c) if the Contractor, in the judgment of the Employer has engaged in integrity violations, as defined in GCC Clause 6, in competing for or in executing the Contract.

42.2.2 If the Contractor

- (a) has abandoned or repudiated the Contract;
- (b) has without valid reason failed to commence work on the Facilities promptly or has suspended, other than pursuant to GCC sub clause 41.2, the progress of Contract performance for more than 28 days after receiving a written instruction from the Employer to proceed;
- (c) persistently fails to execute the Contract in accordance with the Contract or persistently neglects to carry out its obligations under the Contract without just cause;
- (d) refuses or is unable to provide sufficient materials, services or labor to execute and complete the Facilities in the manner specified in the program furnished under GCC sub clause 18.2 at rates of progress that give reasonable assurance to the Employer that the Contractor can attain Completion of the Facilities by the Time for Completion as extended;

then the Employer may, without prejudice to any other rights it may possess under the Contract, give a notice, referred to as Notice of Default, 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 14 days or such additional time as the Employer may permit, of its receipt of such notice, then the Employer may terminate the Contract forthwith by giving a notice of termination to the Contractor that refers to this GCC sub clause 42.2.

42.2.3 Upon receipt of the notice of termination under GCC sub clauses 42.2.1 or 42.2.2, 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 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
- (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.

42.2.4 The Employer may enter upon the Site, expel the Contractor, and complete the Facilities itself or by employing any third party. The Employer may, to the exclusion of any right of the Contractor over the same, take over and use with the payment of a fair rental rate to the Contractor, with all the maintenance costs to the account of the Employer and with an indemnification by the Employer for all liability including damage or injury to persons arising out of the Employer's use of such equipment, any Contractor's Equipment owned by the Contractor and on the Site in connection with the Facilities for such reasonable period as the Employer considers expedient for the supply and installation of the Facilities.

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

42.2.5 Subject to GCC sub clause 42.2.6, 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 on the Site, and the costs, if any, incurred in protecting the Facilities and in leaving the Site in a clean and safe condition, based on documentary evidence, pursuant to paragraph (a) of GCC sub clause 42.2.3. 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.

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

If the sum that the Contractor is entitled to be paid, pursuant to GCC sub clause 42.2.5, plus the reasonable costs incurred by the Employer in completing the Facilities, exceeds the Contract Price, the Contractor shall be liable for such excess.

If such excess is greater than the sums due the Contractor under GCC sub clause 42.2.5, the Contractor shall pay the balance to the Employer, and if such excess is less than the sums due the Contractor under GCC sub clause 42.2.5, the Employer shall pay the balance to the Contractor. For this purpose, the Employer may retain the amount due to the Contractor upon termination and/ or encash/ invoke the securities furnished by the Contractor, at the time and in the manner considered appropriate by the Employer.

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

42.3 Termination by Contractor

42.3.1 The Contractor may terminate the Contract forthwith by giving a notice to the Employer to that effect, referring to this GCC sub clause 42.3.1, 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 or Insolvency Resolution Professional 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.

42.3.2 If the Contract is terminated under GCC sub clauses 42.3.1, 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 Subcontractors'

personnel from the Site; and

- (d) subject to the payment specified in GCC sub clause 42.3.3,
 - (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 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.

42.3.3 If the Contract is terminated under GCC sub clauses 42.3.1, the Employer shall pay to the Contractor all payments specified in GCC sub clause 42.1.3 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.

42.3.4 Termination by the Contractor pursuant to this GCC sub clause 42.3 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 GCC sub clause 42.3.

42.4 In this GCC Clause 42, the expression "Facilities executed" shall include all work executed, Installation Services provided, and all Plant acquired, or subject to a legally binding obligation to purchase, by the Contractor and used or intended to be used for the purpose of the Facilities, up to and including the date of termination.

42.5 In this GCC Clause 42, in calculating any monies due from the Employer to the Contractor, account shall be taken of any sum previously paid by the Employer to the Contractor under the Contract, including any advance payment paid pursuant to the Appendix (Terms and Procedures of Payment) to the Contract Agreement.

43. Assignment

43.1 Neither the Employer nor the Contractor shall, without the express prior written consent of the other party which consent shall not be unreasonably withheld, assign to any third party the Contract or any part thereof, or any right, benefit, obligation or interest therein or thereunder, including assignment of, 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.

I. Claims, Disputes, and Arbitration

44. Contractor's Claims

44.1 If the Contractor considers himself to be entitled to any extension of the Time for Completion and/or any additional payment, under any Clause of these Conditions or otherwise in connection with

the Contract, the Contractor shall submit a notice to the Project Manager, describing the event or circumstance giving rise to the claim. The notice shall be given as soon as practicable, and not later than 28 days after the Contractor became aware, or should have become aware, of the event or circumstance.

If the Contractor fails to give notice of a claim within such period of 28 days, the Time for Completion shall not be extended, the Contractor shall not be entitled to additional payment, and the Employer shall be discharged from all liability in connection with the claim. Otherwise, the following provisions of this sub clause shall apply.

The Contractor shall also submit any other notices, which are required by the Contract, and supporting particulars for the claim, all as relevant to such event or circumstance.

The Contractor shall keep such contemporary records as may be necessary to substantiate any claim, either on the Site or at another location acceptable to the Project Manager. Without admitting the Employer's liability, the Project Manager may, after receiving any notice under this sub clause, monitor the record keeping and/or instruct the Contractor to keep further contemporary records. The Contractor shall permit the Project Manager to inspect all these records, and shall (if instructed) submit copies to the Project Manager.

Within 42 days after the Contractor became aware (or should have become aware) of the event or circumstance giving rise to the claim, or within such other period as may be proposed by the Contractor and approved by the Project Manager, the Contractor shall send to the Project Manager a fully detailed claim, which includes full supporting particulars of the basis of the claim and of the extension of time and/or additional payment claimed. If the event or circumstance giving rise to the claim has a continuing effect,

- (a) this fully detailed claim shall be considered as interim;
- (b) the Contractor shall send further interim claims at monthly intervals, giving the accumulated delay and/or amount claimed, and such further particulars as the Project Manager may reasonably require; and
- (c) the Contractor shall send a final claim within 28 days after the end of the effects resulting from the event or circumstance, or within such other period as may be proposed by the Contractor and approved by the Project Manager.

Within 42 days after receiving a claim or any further particulars supporting a previous claim, or within such other period as may be proposed by the Project Manager and approved by the Contractor, the Project Manager shall respond with approval, or with disapproval and detailed comments. He may also request any necessary further particulars, but shall nevertheless give his response on the principles of the claim within such time.

Each payment certificate shall include such amounts for any claim as have been reasonably substantiated as due under the relevant

provision of the Contract. Unless and until the particulars supplied are sufficient to substantiate the whole of the claim, the Contractor shall only be entitled to payment for such part of the claim as he has been able to substantiate.

The Project Manager shall agree with the Contractor or estimate: (i) the extension (if any) of the Time for Completion (before or after its expiry) in accordance with GCC Clause 40, and/or (ii) the additional payment (if any) to which the Contractor is entitled under the Contract.

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

In the event that the Contractor and the Employer cannot agree on any matter relating to a claim, either party may refer the matter for resolution pursuant to GCC 45 hereof.

45. Disputes and Arbitration

45.1 Conciliation

Conciliation proceedings at the first instance shall be carried out as per the provisions of the Indian Arbitration and Conciliation Act 1996 as amended or may be amended from time to time. The rules and procedure of the conciliation shall be as under :

The party i.e. either the Employer or the Contractor, initiating the conciliation shall send to the other party a written invitation to conciliate briefly identifying the subject of the dispute.

The conciliation proceedings shall commence when the other party accepts in writing the invitation to conciliate.

If the other party rejects the invitation, there will be no conciliation proceedings and either party may refer the dispute to Arbitration in accordance with the procedure laid down in GCC 45.5.

If the party initiating the conciliation does not receive a reply within 30 days from the date on which he sends the invitation, or within such period of time as specified in the invitation, he may treat it as a rejection of invitation to conciliate and if so elects, he shall inform in writing the other party accordingly.

45.2 The conciliation proceedings shall be held preferably with a sole conciliator if mutually agreed by and between the Parties. If the Parties fail to mutually agree for the sole conciliator, the conciliation proceedings shall be held with three conciliators, each party may appoint one conciliator and the parties may agree on the name of the third conciliator who shall act as the presiding conciliator.

The expenses incurred by each party in connection with the preparation, presentation, etc. of its proceedings as also as the fees and expenses to be paid to the conciliator appointed by such party or on its behalf shall be borne by each party itself. The fees

and expenses to be paid to the presiding conciliator or sole conciliator, as the case may be, shall be shared equally and borne by the Parties.

The conciliation proceedings shall be completed within 90 days of receiving a reference from either of the Party and the decision be communicated to the parties. The venue of conciliation proceedings shall be New Delhi and the language of the proceedings shall be English.

The parties shall not initiate, during the conciliation proceedings, any arbitral or judicial proceedings in respect of a dispute that is the subject-matter of the conciliation proceedings except that a party may initiate arbitral or judicial proceedings where, in his opinion, such proceedings are necessary for preserving his rights.

45.3 Settlement Agreement

If the parties reach agreement on a settlement of the dispute and the parties sign a written settlement agreement, authenticated by the Conciliator, then the settlement agreement shall be final and binding on the parties and persons claiming under them respectively. The settlement agreement shall have the same status and effect as if it is an arbitral award on agreed terms on the substance of the dispute rendered by an arbitral Tribunal under Indian Arbitration and Conciliation Act 1996 as amended from time to time.

If the parties do not reach agreement on a settlement of the disputes, then either party may give a 28 days' notice to the other Party of its dissatisfaction and intention to commence arbitration.

45.4 Amicable Settlement

Where notice of dissatisfaction has been given under GCC sub clause 45.3 above, both Parties shall attempt to settle the dispute amicably before the commencement of arbitration. However, unless both Parties agree otherwise, arbitration may be commenced on or after the fifty-sixth (56th) day after the day on which notice of dissatisfaction and intention to commence arbitration was given, even if no attempt at amicable settlement has been made.

45.5 Arbitration

Unless settled amicably, any dispute in respect of which the Conciliator's decision/ opinion (if any) has not become final and binding, shall be finally settled by arbitration under Indian Arbitration and Conciliation Act 1996 (herein referred to as the Act) as amended or as may be amended from time to time.

Unless otherwise agreed by both Parties,

- (a) arbitration proceedings shall be conducted as per the Act read along with the provisions contained herein and the seat of arbitration shall be New Delhi, India;
- (b) arbitration proceedings shall be held in New Delhi, India which shall be the venue of arbitration;
- (c) the arbitration shall be conducted and dispute shall be settled by an arbitral tribunal comprising three arbitrators; and
- (d) the arbitration shall be conducted in the language for communications defined in GCC sub clause 5.3.

Further, the following shall be applicable:

- i. In the arbitral tribunal consisting of three arbitrators, one each shall be appointed by the Employer and the Contractor. The third arbitrator shall be chosen by the two Arbitrators so appointed by the parties and shall act as presiding arbitrator. In case of failure of the two arbitrators, appointed by the parties to reach upon a consensus within a period of 30 days from the appointment of the arbitrator appointed subsequently, the presiding arbitrator shall be appointed by the "President of the Institution of Engineers (India)".
- ii. If one of the parties fails to appoint its arbitrator in pursuance of above, within 30 days after receipt of the notice of the appointment of its arbitrator by the other party, then the President of the Indian Institute of Engineers (India), shall be approached to appoint the arbitrator. A certified copy of the order of the President of the Institution of Engineers (India) making such an appointment shall be furnished to each of the parties.
- iii. The decision of the majority of the arbitrators shall be final and binding upon both parties. The cost and expenses of arbitration proceedings will be paid as determined by the arbitral tribunal.

However, the expenses incurred by each party in connection with the preparation, presentation, etc. of its proceedings as also as the fees and expenses to be paid to the arbitrator appointed by such party or on its behalf shall be borne by each party itself. The fees and expenses to be paid to the presiding arbitrator shall be shared equally and borne by the Parties.

- iv. The arbitrator(s) shall give reasoned award

- v. The arbitrator(s) shall have full power to open up, review and revise any certificate, determination, instruction, opinion or valuation of the Project Manager, and any decision or opinion of the Conciliator, relevant to the dispute. Nothing shall disqualify the Project Manager from being called as a witness and giving evidence before the arbitrator(s) on any matter whatsoever relevant to the dispute.

Neither Party shall be limited in the proceedings before the arbitrator(s) to the evidence or arguments previously put before the Conciliator to obtain its decision, or to the reasons for dissatisfaction given in its notice of dissatisfaction. Any decision or opinion of the Conciliator shall not be admissible in evidence in the arbitration.

- vi. Arbitration may be commenced prior to or after Completion of the Facilities. The obligations of the Parties, the Project Manager, and the Conciliator shall not be altered by reason of any arbitration being conducted during the progress of the works related to the Facilities.

45.6 The entire process, cumulatively, as per the GCC Clause 45 shall be referred to as the process for dispute resolution

J. Contract Closing

- 46. Contract Closing**
- 46.1 On Completion and Taking Over of the Facilities, the activities including but not limited to those mentioned below shall be commenced and completed progressively without delay, jointly by the Employer and the Contractor under coordination by the Project Manager, and the Contract shall be closed within 3 (three) months following successful completion of Defect Liability Period :
- (i) Material reconciliation of owner free issued materials/ items as well as material/ items supplied by the Contractor under the Contract;
 - (ii) Payment reconciliations and verifications;
 - (iii) Approval for extension of Time for Completion, with or without compensation, as applicable;
 - (iv) Certification from Contractor regarding payment of dues to its
 - a. sub-vendors/ sub-contractors/ manufactures etc.,
 - b. workers/ contract labourers,
 - c. payment of statutory dues toward Provident Funds, wages etc. as required;
 - (v) Certification of Project Manager & Contractor to the effect that installation, testing and commissioning of the Facilities and the Plant forming part of the Facilities have been completed as per specifications laid down in the Contract and defects noted at the time of Commissioning and notified to the Contractor by the Project Manager have been rectified to the satisfaction of Employer;
 - (vi) Removal of construction, temporary or otherwise, meant for and related to site stores, hutment, labour colony etc. in the

premises of Employer;

- (vii) Approval of final amendment to the Contract including extension of Time for Completion, amended drawings etc., as applicable, and Certificate from Project Manager in that regard;
- (viii) Drawing, manual and other documents, as applicable, receipt certificate by the Project Manager;
- (ix) Receipt of compliance report on Quality related aspects along with photographs, Assurance documents, as may be applicable, by Project Manager;
- (x) Shortfall in Plant/ equipment performance and settlement of Liquidated Damages, if any, on that account, issued by Project Manager;
- (xi) No demand certificate issued by Contractor;
- (xii) Defect Liability Certificate regarding successful completion of Defect Liability Period of the Facilities or part thereof, as per Contract, by Project Manager;
- (xiii) Certificate regarding return of Performance Security / Indemnity Bond and other securities by Project Manager/Employer; and
- (xiv) Any other activity as may be required.

46.2 Performance Certificate

- (i) Performance Certificate shall be issued by Employer upon completion of all the activities as per clause GCC 46.1 and Contractor's obligations including Defect Liability Period and its acceptance by the Employer, stating inter alia the date of such completion. The Performance Certificate shall be issued by the Employer within 28 (twenty-eight) days of the said date.
- (ii) Only the Performance Certificate shall be deemed to constitute acceptance of the Facilities/ Works by the Employer.