Mahindra WORLD CITY

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August 2022

REQUEST FOR PROPOSAL FOR DESIGN, BUILD, SUPPLY, INSTALLATION, TESTING, COMMISSIONING, ARRANGING REQUISITE APPROVALS, OPERATING & MAINTENANCE OF ROOFTOP / GROUND MOUNTED SOLAR PHOTOVOLTAIC (PV) SYSTEM FOR "IT UGR, DTA STP, HC STP & DTA UGR" AT MAHINDRA WORLD CITY, JAIPUR (CAPEX, OPEX & OPEN ACCESS – THREE OPTIONS)

Site Visit Date	By **24-Aug-22**
Date of Pre-Bid Meeting	**26-Aug-22, 10:00** Hours to **17:00** Hours
Bid Submission Date	**31-Aug-22, 10:00** Hours to **17:00** Hours

REQUEST FOR PROPOSAL FOR DESIGN, BUILD, SUPPLY, INSTALLATION, TESTING, COMMISSIONING, ARRANGING REQUISITE APPROVALS, OPERATING & MAINTENANCE OF ROOFTOP / GROUND MOUNTED SOLAR PHOTOVOLTAIC (PV) SYSTEM FOR "IT UGR, DTA STP, HC STP & DTA UGR" AT MAHINDRA WORLD CITY, JAIPUR (CAPEX, OPEX & OPEN ACCESS – THREE OPTIONS)

Date of Issue: 19.08.2022

RFP Document issued to:

M/s ……
……
……

Issued By:

Mahindra World City (Jaipur) Limited,

PO-Mahindra World City, Tehsil-Sanganer,

Jaipur-302037

VOLUME-I	**:**	**RFP DOCUMENT**
VOLUME-II	**:**	**SCOPE OF WORK**
VOLUME-III	**:**	**LOCATION LAYOUT WITH AREA DETAILS AND COORDINATES**
VOLUME-IV	**:**	**LAST 6 MONTHS ELECTRICITY CONSUMPTION DETAILS**
VOLUME-V	**:**	**ENERGY & ENVIRONMENT CONSERVATINN MEASURES**
VOLUME-VI	**:**	**EHS REQUIREMENNTS (REV 2.9)**
VOLUME-VII	**:**	**QA VIOLATION CLAUSES**
VOLUME-VIII	**:**	**CONTRACTOR CODE OF CONDUCT**
VOLUME -IX	**:**	**STANDARD FOR ONSITE WORKERS HOUSING QUARTERS**
VOLUME -X	**:**	**BILL OF QUANTITIES & BOM**
VOLUME -XI	**:**	**CAPACITY DETAILS & TIMELINE**
VOLUME -XII	**:**	**SCOPE OF AMC**

VOLUME-I

REQUEST FOR PROPOSAL

To,

Date-19/08/2022

Dear Sirs,

Project: Project at MAHINDRA WORLD CITY (JAIPUR) LIMTED.

Subject: Request for Proposal for DESIGN, BUILD, SUPPLY, INSTALLATION, TESTING, COMMISSIONING, ARRANGING REQUISITE APPROVALS, OPERATING & MAINTENANCE OF ROOFTOP / GROUND MOUNTED SOLAR PHOTOVOLTAIC (PV) SYSTEM FOR "IT UGR, DTA STP, HC STP & DTA UGR" AT MAHINDRA WORLD CITY, JAIPUR (CAPEX, OPEX & OPEN ACCESS – THREE OPTIONS)

MAHINDRA WORLD CITY (JAIPUR) LIMITED is developing and maintaining an Integrated city (Multi Product SEZ & DTA Area) and invites request for proposal for subject on CAPEX, OPEX & OPEN ACCESS models (All 3 Options to be invited) from selected & Pre-qualified Bidders.

Proposal: You are requested to submit your proposal with digital signature in line with above subject requirement:

Validity of Proposal: The Proposal validity required is 120 days.

RFP Inviting Developer:
Mahindra World City (Jaipur) Limited,
411, Neelkanth Towers, 1,
Bhawani Singh Marg,
C-Scheme – 302001,
Jaipur (Rajasthan)
Tel: +91 141 6683454

Contact Person(s) / RFP Dealing Officer(s)
Ms. Taqdis Shaikh
Phone: +91 91676 32714
Email: shaikh.taqdis@mahindra.com

Site Contact Person(s)
Mr. Bibhor Singh (Contracts team)
Phone: +91 99293 88804
Email: singh.bibhor@mahindra.com

RFP-NOTICE

1. **Name of Work:**
MAHINDRA WORLD CITY (JAIPUR) LIMITED is developing an Integrated township (Multi Product SEZ & DTA Area) and invites Bids for the below mentioned works from the selected & Pre-qualified Bidders.

Name of work	Completion Period (Days)
DESIGN, BUILD, SUPPLY, INSTALLATION, TESTING, COMMISSIONING, ARRANGING REQUISITE APPROVALS, OPERATING & MAINTENANCE OF ROOFTOP / GROUND MOUNTED SOLAR PHOTOVOLTAIC (PV) SYSTEM FOR "IT UGR, DTA STP, HC STP & DTA UGR" AT MAHINDRA WORLD CITY, JAIPUR (CAPEX, OPEX & OPEN ACCESS – THREE OPTIONS)	Valid for a period of 120 days from the date of submission of the RFP documents.
Head Office Address	**Work Site Address**
Mahindra Lifespace Developers Limited, Mahindra Towers, 5th Floor, Road No. 13, Worli, Mumbai, Maharashtra 400018	Mahindra World City (Jaipur) Limited, PO-Mahindra World City, Tehsil - Sanganer, Jaipur-302037

2. Bids must be submitted online via email on or before last date of bid Submission.

3. Other details can be seen in the Bidding documents.

4. **NOTE (Important):**

i. If the due date of opening falls on a holiday, the RFP will be opened on the next working day.
ii. In case minimum 03 (three) bids are not received within originally stipulated time, the Bid Submission End Date will be extended initially for 02 (two) days and if still less than 03 bids are received, the Bid Submission End Date will be extended by another 05 (five) days.
iii. There will be no physical / manual sale of the RFP Document.
iv. Bidders are advised to download the complete set of the RFP Document, including the RFP details with annexure, "if any".
v. In case, due to any reason the scheduled dates for opening of technical and financial parts as mentioned above are holidays or due to any reason the office remains closed or due to any acts of God it becomes unapproachable (solely at the discretion of RFP inviting Developer), the next working day will be applicable while the previous specified time will remain the same.
vi. Any corrigendum / addendum in respect of the above RFP shall be made available by the Contracts team via email. No press advertisement will be given.
vii. The tenderer shall submit the Tender after carefully examining the general and special conditions of Contract, Appendices, Drawings, Specifications, Bill of Quantities etc. and inspection of site. The tenderer is expected to inspect the site of the proposed work and acquaint itself with the site conditions, approaches, availability of raw materials, geological and weather conditions, etc. before quoting its rates. Submission of the tender shall be

deemed to be in due compliance with this clause. The Developer reserves the right to split the tender in two or more parts as it may deem fit and award the same to different entities.

viii. The acceptance of a tender shall rest at the discretion of Developer or its authorized representative and does not bind itself to accept the lowest tender and reserves to itself the right to reject any or all the tenders received without assigning any reason(s) whatsoever. Non-acceptance of any tender shall not make Developer liable for compensation or damages.

5. **Pre-bid Meeting:**
The pre-bid meeting shall be held in the office of RFP Inviting Developer on the scheduled date & time, only if specified online. Non-attendance of pre-bid meeting will not be a cause for disqualification of the bidder, and it shall be presumed that the bidder does not require any clarification. The purpose of the pre-bid meeting will be to clarify issues.

A. GENERAL INSTRUCTIONS:

1 Scope of Bid:
Mahindra World City (Jaipur) Limited (MWCJL), (referred to as Developer in these documents) invite Bids for the scope of work as defined in these documents and referred to as "**the Works**") detailed in the scope of work document.

2 One Bid per Bidder:
2.1 Each Bidder shall submit only one Bid for one Contract.
2.2 RFP documents are not transferable

3 Cost of Bidding:
The Bidder shall bear all costs associated with the preparation and submission of his Bid, and the Developer will in no case be responsible and liable for those costs.

4 Site visit:
The Bidder, at the Bidder's own responsibility and risk is encouraged to visit and examine the Site of Works and its surroundings and obtain all information that may be necessary for preparing the Bid and entering a Contract for construction of the Works. The costs of visiting the Site shall be at the Bidder's own expense.

B. BIDDING DOCUMENTS:

5 Contents of Bidding Documents:
The set of bidding documents comprises the documents listed in the table below and addenda issued in accordance with Clause 8 (if any)

VOLUME-I	**:**	**RFP DOCUMENT**
VOLUME-II	**:**	**SCOPE OF WORK**
VOLUME-III	**:**	**LOCATION LAYOUT WITH AREA DETAILS AND COORDINATES**
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VOLUME -XII	**:**	**SCOPE OF AMC**

6 Clarification of Bidding Documents:

The Developer has the sole discretion to short list Bidders and shall inform them in writing by e-mail. These short-listed Bidders (shall be known as Bidder / Bidders hereinafter) requiring any clarification of the Bidding documents may notify the Developer by e-mail or may contact RFP Dealing Officer, detail of the officer is mentioned on the RFP notice form.

The Developer will respond to any request for clarification all such quarries shall be made at least three (03) days before date of submission of Bids as per *Clause 16*.

C. PREPARATION OF BIDS:

7 Language of the Bid:

All documents relating to the Bid shall be in the English language.

8 Documents comprising the Bid:

The Bid submitted by the Bidder shall comprise the following:

a) The Bidder will submit the complete construction drawing with BOQ's, Shadow analysis, etc.
b) The Bidder will submit the complete proposal where in all commercial without any exception are incorporated with all the terms & condition as per CAPEX, OPEX and OPEN ACCESS models (All 3 options to be submitted) based on details shared in RFP.
c) Bidder will clarify and submit all the statutory requirement in relevant with this work.
d) Specifications and Drawing Volumes duly signed and stamped by the Bidder on each page.
e) Any other materials required to be completed and submitted by bidders in accordance with these instructions.
f) The Bidder will share PPA (Power Purchase Agreement) as well as Tri-party Agreement if applicable.

9 Bid Prices:

9.1 The proposal shall be deemed inclusive of all costs for material and labour, liaison costs, maintenance costs, plant, EPF, Workmen Compensation, taxes, duties, royalties, levies, etc. equipment, overhead, supervision, profit, preliminaries, all temporary works, night works, shift works, storage facility, security, working with site constraints, working with full compliance to all requirement, restrictions etc. from all relevant authorities.

9.2 The proposal shared by the Bidder shall be fixed for the duration of the Contract and shall not be subject to adjustment on any account whatsoever.

10 Currencies of Bid and Payment:

The rates and the prices given are in Indian Rupees.

11 Bid Validity:

Bids shall remain valid for a period not less than 120 (Ninety) days after the date for Bid submission specified in ***Clause 16***. A Bid corrected by the Bidder as valid for a shorter period shall be rejected by the Developer as non-responsive.

12 Contract Price:

The Contract Price will remain firm and valid till six months from the contract completion date. No escalation whatsoever shall be allowed during this period.

The Contract Price shall include complete cost of the hiring charges, labour, machinery, and equipment, including all transportation, loading & unloading, tools & tackles, scaffolding, consumables, all lead and lift, taxes (Excl. GST), any other cess, duties, freight etc., damages, safety measures & insurance, erection of temporary godown for storing of materials, carrying out test whenever required, clearing of site, all overheads, and profits etc., complete.

D. SUBMISSION OF BIDS:

13 Sealing and Marking of Bids:

All bids are to be submitted online via email to the Developer.

14 Deadline for Submission of the Bids:

Bids must be received by the Developer online no later than 17:00 hours on 31.08.2022. In the event of the specified date for the submission of Bids declared a holiday for the Developer, the Bids will be received up to the appointed time on the next working day. The Developer may extend the deadline for submission of Bids by issuing an amendment indicating the revised deadline.

E. BID OPENING AND EVALUATION:

15 Process to Be Confidential:

Information relating to the examination, clarification, evaluation, and comparison of Bids and recommendations for the award of a Contract shall not be disclosed to Bidders or any other persons not officially concerned with such process until the award to the successful Bidder has been announced. Any effort by a Bidder to influence the Developer's processing of Bids or award decisions may result in the rejection of his Bid.

16 Correction of Errors:

16.1 Bids determined to be substantially responsive will be checked by the Developer for any arithmetic errors. Errors will be corrected by the Developer as follows:

a) Where there is a discrepancy between the rates in figures and in words, the rate in words will govern; and

b) Where there is a discrepancy between the unit rate and the line-item total resulting from multiplying the unit rate by the quantity, the unit rate as quoted will govern.

16.2 The amount stated in the Bid will be adjusted by the Developer in accordance with the above procedure for the correction of errors and, with the concurrence of the Bidder, shall be considered as binding upon the Bidder. If the Bidder does not accept the corrected amount the Bid will be rejected.

17 Developer's Right to Accept any Variation:

The Developer reserves the right to accept or reject any variation, deviation from the Bid document, or any alternative offer. Variations, deviations and alternative offers and other factors which are in excess of the requirements of the Bidding documents or otherwise result in unsolicited benefits for the Developer shall not be taken into account in Bid evaluation.

F. AWARD OF CONTRACT:

18 Award Criteria:

18.1 The Developer will negotiate with the Bidder whose Bid has been determined to be substantially responsive to the Bidding documents. On completion of negotiations the Developer will award the Contract to the most suitable Bidder.

19 Developer's Right to Accept any Bid and to Reject any or all Bids:

19.1 Notwithstanding Clause 19, the Developer reserves the right to accept or reject any Bid or part of the Bid, and to cancel the Bidding process and reject all Bids, at any time prior to the award of Contract, without thereby incurring any liability to the affected Bidder or Bidders or any obligation to inform the affected Bidder or Bidders of the grounds for the Developer's action.

20 Notification of Award and Signing of Agreement:

The Bidders whose Bid has been accepted will be issued Letter of Intent incorporating the final negotiated value of contract and major terms agreed mutually. Detailed work order comprising final negotiated item rates and detailed terms negotiated and agreed mutually shall be issued in due course along with form of agreement provided in bidding documents incorporating all agreements between parties.

21 Corrupt or Fraudulent Practices:

The Developer expects the Bidders, Suppliers, Agency, and Consultants, observe the highest standard of ethics and integrity during the procurement and execution of such Contracts. Therefore, the Developer will reject the Bid and blacklist such Bidder, barring him from participation in future Bidding in the event he found indulged in any malpractice such as bribe, or other inducements to any person with a view to influence the placing of the Contract.

VOLUME-II

SCOPE OF WORK

SCOPE OF WORKS:

Brief Description of Works	DESIGN, BUILD, SUPPLY, INSTALLATION, TESTING, COMMISSIONING, ARRANGING REQUISITE APPROVALS, OPERATING & MAINTENANCE OF ROOFTOP / GROUND MOUNTED SOLAR PHOTOVOLTAIC (PV) SYSTEM FOR "IT UGR, DTA STP, HC STP & DTA UGR" AT MAHINDRA WORLD CITY, JAIPUR (CAPEX, OPEX & OPEN ACCESS – THREE OPTIONS)
Location (Site) of Works	"MWC, JAIPUR"
Commencement and completion periods:	Start of work within 10 days from the issue of LOI & completion of project within 3 months after start of work.

Design, build, supply, installation, testing, commissioning, arranging requisite approvals, operating & maintenance of rooftop / ground mounted solar photovoltaic (PV) system for "it UGR, DTA STP, HC STP & DTA UGR" at Mahindra World City, Jaipur (capex, Opex & open access – three options)

Solar PV shall be installed at three locations for the capacity:

Solar Capacity Utility wise at Mahindra World City, Jaipur		
S.No	**Utility Name**	**Capacity (KWP)**
1	MTP evolve	290
5	IT UGR	81
2	UGR-DTA	40
3	STP-DTA	61
4	STP, UGR & TTP) HC	135
Total		**607**

Agency shall Design, Supply, Install, Commission, Operate & Maintain the project, all costs including liaison, Net metering, statutory to be inclusive in the proposal. The proposal should include important safety and maintenance related equipment like water pipeline on the roof and a pump.

Proposal shall have 3 options: (a) CAPEX, (b) OPEX & (c) OPEN ACCESS

Separate PPA having all terms & conditions shall be signed by both the parties.

OBLIGATIONS OF THE POWER PRODUCER:

Subject to the terms and conditions of this Agreement, the Power Producer undertakes and agrees to be responsible for:

(a) Owning, installing, operating, and maintaining the Main Metering System and Solar Power Plants during the Term of the Agreement at its own cost and risk.

(b) Fulfilling all other obligations undertaken by it under this Agreement and comply with the requirements of Electricity Laws

(c) Obtaining all regulatory and statutory approvals required to install and operate the Main Metering System, Solar Power Plant, Reverse flow protection relay and all related equipment and keep such regulatory and statutory approvals active during the Term or any extended Term of the Agreement.

(d) Supplying Electricity to the Off taker in accordance with terms of this Agreement.

(e) Disposing of the Main Metering System and Solar Power Plants and all related equipment upon the termination of this Agreement or the exclusion of any Solar Power Plants in an environmentally conscious manner and complying with latest E-waste management rules environmental laws.

GENERAL CONDITIONS OF CONTRACT

GENERAL CONDITIONS OF CONTRACT:

1. GENERAL PROVISIONS:

1.1. DEFINITIONS:

In the Conditions of Contract ("these Conditions"), which include Special Conditions of Contract and these General Conditions, the following words and expressions shall have the meanings as stated. Words indicating persons or parties include corporations and other legal entities, except where the context requires otherwise.

1.1.1. The Contract:

1.1.1.1. "**Contract**" means the Contract Agreement, the Letter of Acceptance, the Letter of RFP, Letter of Award, these Conditions, the Specifications, the Drawings, the Schedules, and the further documents (if any) which are listed in the Contracts Agreement or in the Letter of Acceptance etc.

1.1.1.2. **"Contract Agreement"** means the contract agreement (if any) referred to in Sub-Clause 1.6 [Contract Agreement].

1.1.1.3. **"Letter of Acceptance/Intent"** means the letter of formal acceptance, signed by the Project Developer, of the Letter of RFP, including any annexed memoranda comprising agreements between and signed by both Parties. If there is no such letter of acceptance, the expression "Letter of Acceptance/Intent" means the Contract Agreement and the date of issuing or receiving the Letter of Acceptance/Intent means the date of signing the Contract Agreement.

1.1.1.4. **"Letter of Award"** means the letter of formal letter signed and issued by the Project Developer to execute the work formally with details signed by both Parties. It is just an extension to the "Letter of Acceptance/Intent" issued after Letter of Acceptance/Intent and before issuing the Purchase Order.

1.1.1.5. **"Letter of RFP"** means the document entitled letter of RFP, which was completed by the Agency and includes the signed offer to the Project Developer for the Works.

1.1.1.6. **"Specification"** means the document entitled specification, as included in the Contract, and any additions and modifications to the specification in accordance with the Contract. Such document specifies the Works.

1.1.1.7. **"Drawings"** means the drawings of the Works, as included in the Contract, and any additional and modified drawings and/or sketches, details issued by (or on behalf of) the Project Developer in accordance with the Contract from time to time.

1.1.1.8. **"Schedules"** means the document(s) entitled schedules, completed by the Agency, and submitted with the Letter of RFP, as included in the Contract. Such document may include the Bill of Quantities, data, lists, and schedules of rates and / or prices.

1.1.1.9. **"RFP"** means the Letter of RFP and all other documents which the Agency submitted with the Letter of RFP, as included in the Contract.

1.1.1.10. **"Appendix to RFP"** means the completed pages entitled appendix to RFP which are appended to and from part of the Letter of RFP

1.1.1.11. **"Bill of Quantities"** and **"Day-work Schedule"** mean the documents so named (if any) which are comprised in the Schedules.

1.1.2. <u>Parties and Persons:</u>

1.1.2.1. "Party" means the Project Developer or the Agency, as the context requires. Parties mean both the "Project Developer" and the "Agency".

1.1.2.2. "Project Developer" / "Developer" means the Mahindra World City (Jaipur) Limited (MWCJL) named as Project Developer in the Appendix to RFP and the legal successors in title to this Entity.

1.1.2.3. "Agency or Bidder" shall mean the individual or firm or Developer whether incorporated or not, undertaking the works and shall include legal representatives of such individual or persons composing such firm or unincorporated Developer or successors of such firm or Developer as the case may be and permitted assigns of such individual or firm or Developer.

1.1.2.4. "Project Manager" means the person appointed by the Project Developer i.e., Infrastructure Head to act as the Project Manager for the purposes of the Contract and named in the Appendix to RFP, or other person/organization etc. appointed from time to time by the Project Developer and may be notified to the Agency under Sub-Clause 3.4 [Replacement of the Project Manager].

1.1.2.5. "Agency's Representative" means the person named by the Agency in the Contract or appointed from time to time by the Agency under Sub-Clause 4.3 [Agency's Representative], who acts on behalf of the Agency.

1.1.2.6. "Project Developer's Personnel" means the Project Manager, the assistants referred to in Sub-Clause 3.2 [Delegation by the Project Manager] and all other staff, labour and other employees of the Project Developer, and any other personnel notified to the Agency, by the Project Developer or the Project Manager, as Project Developer's Personnel.

1.1.2.7. "Agency's Personnel" means the Agency's Representative and all personnel whom the Agency utilises on Site, who may include the staff, labour, and other employees of the Agency and of each Subcontractor; and any other personnel assisting the Agency in the execution of the Works.

1.1.2.8. "Subcontractor" means any person named in the Contract as a Subcontractor, or any person appointed as a Subcontractor, for a part of the Works; and the legal successors in title to each of these persons.

1.1.2.9. “Bill of Quantities” shall mean the document titled "Bill of Quantities" providing inter alia, description of the Works, details of relevant material and their rates for the purpose of undertaking the Works forming part of the Contract Documents and the Contract agreement.

1.1.2.10. “Change Order” shall mean a written change order, approved and signed by the Project Developer incorporating the change in Main Works and/or each of the Provisional Works Packages, as the case may be, and providing for any increase or reduction of the Contract Price, change in Contract Period or other relevant changes, in each case resulting from such change in Main Works and/or such Provisional Works Package.

1.1.2.11. “**Entity**” shall refer either to an individual, sole proprietorship, firm, partnership or a Developer as the case may be.

1.1.2.12. The “**Site**” shall mean the lands and/or other places on under in or through which the work is to be executed under the contract including any other lands or places which may be allotted by the Corporation or used for the purposes of the contract.

1.1.3. <u>Dates, Tests, Periods and Completion</u>

1.1.3.1. “Base Date” means the date of submission of the RFP.

1.1.3.2. “Commencement Date” means the date notified under Sub-Clause 8.1 [Commencement of Works]

1.1.3.3. “Time of Completion” means the time for completing the Works or a Section (as the case may be) under Sub-Clause 8.2 [Time for Completion], as stated in the Appendix to RFP (with any extension under Sub Clause 8.4 [Extension of Time for Completion]), calculated from the Commencement Date.

1.1.3.4. “Tests on Completion” means the tests which are specified in the Contract or agreed by both Parties or instructed as a Variation, and which are carried out under Clause 9 [Tests on Completion] before the Works or a Section (as the case may be) are taken over by the Project Developer.

1.1.3.5. “Taking - Over Certificate” means a certificate issued under Clause 10 [Project Developer’s Taking Over].

1.1.3.6. “Tests after Completion” means the tests (if any) which are specified in the Contract, and which are carried out in accordance with the provisions of the Conditions of Contract after the Works or a Section (as the case may be) are taken over by the Project Developer.

1.1.3.7. “Work Completion Certificate” means the certificate issued under Sub-Clause 11.9 [Work Completion Certificate].

1.1.3.8. “Day” means a calendar day and “Year” means 365 days and in case of leap year, its 366 days.

1.1.4. <u>Money and Payments (All commercials shall be in accordance with agreed PPA with both the parties)</u>

1.1.5. Works and Goods:

1.1.5.1. "Agency's Equipment" means all apparatus, machinery, vehicles and other things required for the execution and completion of the Works and the remedying of any defects. However, Agency's Equipment excludes Temporary Works, Project Developer's Equipment (if any), Plant, Materials and any other things intended to form or forming part of the Permanent Works.

1.1.5.2. "Goods" means Agency's Equipment, Materials, Plant and Temporary Works, or any of them as appropriate.

1.1.5.3. "Materials" means things of all kinds (other than Plant) intended to form or forming part of the Permanent Works, including the supply – only materials (if any) to by supplied by the Agency under the Contract.

1.1.5.4. "Permanent Works" means the permanent works to be executed by the Agency under the Contract.

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

1.1.5.6. "Section" means a part of the works identified as such and more particularly described in the specifications or schedule of works for which a date of completion is stipulated in RFP or subsequent communications.

1.1.5.7. "Temporary Works" means all temporary works of every kind (other than Agency's Equipment) required on Site for the execution and completion of the Permanent Works and the remedying of any defects.

1.1.5.8. The "Works" is defined as the scope of supply and/or services or both as the context may demand; reasonably inferred from the various documents such as drawings, Bill of Quantities, specifications, site instructions etc. for which the Project Developer and the Agency have agreed to enter into this contract.

A brief description of Work to be executed under this contract is provided in Appendix CD/A to RFP. The brief description provided therein is for the sake of convenience only and for detailed description and/or scope, various Contract documents shall be used. The brief definition elsewhere in the RFP in no way alters the intent defined in the various documents mentioned above.

The expression "Works" or "Work" were used in these conditions shall unless there be something in the subject or context repugnant to such grammatical construction, be construed to mean the Work or part of Work contracted to be executed or in virtue of the contract, whether temporary or permanent and whether original, altered, substituted or additional.

1.1.6. Other Definitions

1.1.6.1. “Agency’s Documents” means the calculations, computer programs and other software, drawings, manuals, models and other documents of a technical nature (if any) supplied by the Agency under the Contract.

1.1.6.2. “Country” means India (Jaipur, Rajasthan) where the Site is located, where the Works are to be executed.

1.1.6.3. “Project Developer’s Equipment” means the apparatus, machinery and vehicles (if any) made available by the Project Developer for the use of the Agency in the execution of the Works, as stated in the Specification; but does not include Plant which has not been taken over by the Project Developer.

1.1.6.4. “Force Majeure” is defined in Clause 19 [Force Majeure].

1.1.6.5. “Laws” shall mean any act, law, legislation, statute, rule, regulation, ordinance, decree, notification, policy, by-law, administrative guideline, ruling, instruction, directive, code, requirement, consent, license, approval, permit, judgment, court order, treaty promulgated by any Governmental Authority or any other law and any interpretation thereof by any Governmental Authority as applicable in the Country.

1.1.6.6. “Performance Guarantee” means the bank guarantee (or bank guarantees, if any) under Sub-Clause 4.2 [Performance Guarantee].

1.1.6.7. “Site” means the places where the Permanent Works are to be executed and to which Plant and Materials are to be delivered, and any other places as may be specified in the Contract as forming part of the Site.

1.1.6.8. “Variation” means any change to the Works, which is instructed or approved as a Change Order under Clause 13 [Variations and Adjustments].

1.1.6.9. “Affiliate” shall mean any other party that directly or indirectly or through one or more intermediaries, controls, is controlled by or is under common control with the Project Developer. For purposes of the foregoing, “control, “controlled by” and “under common control with” with respect to any party shall mean the possession, directly or indirectly, of the power to direct or determine the direction of the management and policies or through any other lawfully permissible means.

1.1.6.10. A “Day” shall mean a day of 24 hours from mid-night to midnight irrespective of the number of hours worked in that day.

1.1.6.11. A “Week” shall mean seven days without regard to the number of hours worked in any day in that week.

1.1.6.12. "Engineer-in-charge" shall mean the Engineer officer appointed by the Developer or his duly authorized representative who shall direct, supervise and be in-charge of the works for purposes of this contract.

2. INTERPRETATION:

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 or be recorded in writing, and
d) "written" or "in writing" means hand-written, type-written, printed or electronically made, and resulting in a permanent record, emails and electronic correspondence not submitted in hard copy with signatures within 3 days from the date of such email and electronic correspondence shall not be treated as "Written" or "in writing".
e) The marginal words and other headings shall not be taken into consideration in the interpretation of these Conditions.

3. COMMUNICATIONS

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

(a) in writing and delivered by hand (against receipt), sent by mail or courier, or transmitted, facsimile.
(b) delivered, sent or transmitted to the address for recipient's communications as stated in the Appendix to RFP, however:
  (i) if the recipient gives notice of another address, communications shall thereafter be delivered; accordingly, and
  (ii) if the recipient has not stated otherwise when requesting an approval of consent, it may be sent to the address from which the request was issued.

Approvals, certificates, consents, and determinations shall not be unreasonably withheld or delayed.

4. LAW AND LANGUAGE

The contract shall be governed by the Laws of the Republic of India as applicable and amended from time to time. The language of communication shall be in English only.

5. PRECEDENCE OF DOCUMENTS

The documents forming the Contract are to be taken as mutually explanatory of one another. For the purposes of interpretation and in the event of any contradiction, the precedence shall be considered in the following order (preference order number is given):

(i) Contract Agreement and any other special conditions signed along with the Contract Agreement and Schedules forming part of the Contract – Annexure-1
(ii) Special Conditions of Contract and its Annexures -2
(iii) General Conditions of Contract and its Annexures – 3
(iv) The Letter of Award – 4
(v) The Letter of Acceptance/Intent' – 5

(vi) The Letter of RFP and its Appendix -6
(vii) Specifications, Drawings, and proposal -7

In the event of further ambiguity or discrepancy, the Project Manager shall issue any necessary clarification or instruction which shall be final and binding on the Agency.

5.1. CONTRACT AGREEMENT (PPA)

The Parties shall enter into a Contract Agreement within 60 days after the Agency receives the Letter of Acceptance/Intent unless the parties agree otherwise. The Contract Agreement shall be based upon the form annexed to the Contract Documents. Agency shall submit an undertaking on non-judicial stamp paper (of Jaipur, Rajasthan) as per Appendix F (if applicable) before entering Contract and the undertaking shall form a part of this contract. Such undertaking shall be duly signed and stamped by the authorized signatories having power of attorney to enter into the Contract from Board of Directors of the Agency. The costs of stamp duties and similar charges (if any) imposed by law in connection with entry into the Contract Agreement shall be borne and paid by the Agency.

5.2. ASSIGNMENT

Agency shall not assign the whole or any part of the Contract or any benefit or interest in or under the Contract to any other party/organization/entity or any other directly or indirectly related party to the Agency. However, the Agency:

(a) may assign the whole or any part of the Contract with the prior written consent of the Project Developer, at the sole discretion of the Project Developer, and
(b) may, as security in favour of a bank or financial institution, assign its right to any moneys due, or to become due, under the Contract with prior written consent of the Project Developer.

However, the Project Developer may assign its interest in whole or any part of the Contract at any stage to its Affiliates and/or third party by giving written information to the Agency.

Any violation of this clause shall result in penalty thus further resulted in termination of the contract agreement without any dues.

5.3. CARE AND SUPPLY OF DOCUMENTS

The Specification and drawings shall be in the custody and care of the qualified Bidder. Unless otherwise stated in the contract, one copy of the Contract and three copies of each subsequent Drawing shall be submitted by qualified Bidder to Project Developer.

Project Developer will approve the drawings/specifications as enlisted in the contract document. Agency shall provide & study such drawings/specifications and confirm the sufficiency of the information given in such drawings/specifications for execution and completion of the Works in stipulated time for completion.

5.4. DRAWINGS:

The drawing stamped as “For site Execution” or “Execution” or “Good for construction” only shall be used for execution. All drawings issued for work will be Developer’s property and remain at site with contractors site staff and same should be returned to Developer upon completion of work. Proper records will be kept for all the working and structural drawings

issued by Developer separately. All the deleted and revised drawings shall be returned to Project Manager promptly. Contractor will be liable for the misuse of any Architects / Consultants working and structural drawings, details, and sections. Any changes in drawings / specifications shall not be considered as increase in scope of work.

5.5. PROJECT DEVELOPER'S USE OF AGENCY'S DOCUMENTS

As between the Parties, the Agency shall retain the copyright and other intellectual property rights in the Agency's Documents and other design documents made by (or on behalf of) the Agency.

The Agency shall be deemed (by signing the Contract) to give to the Project Developer a non-terminable transferable non-exclusive royalty-free license to copy, use and communicate the Agency's Documents, including making and using modifications of them. This license shall:

(a) apply throughout the actual or intended working life (whichever is longer) of the relevant parts of the Works,

(b) entitle any person in proper possession of the relevant part of the Works to copy, use and communicate the Agency's Documents for the purposes of completing, operating, maintaining, altering, adjusting, repairing and demolishing the Works, and

(c) In the case of Agency's Documents which are in the form of computer programs and other software, permit their use on any computer on the Site and other places as envisaged by the Contract, including replacements of any computers supplied by the Agency.

The Agency's Documents and other design documents made by (or on behalf of) the Agency shall not, without the Agency's consent, be used, copied or communicated to a third party by (or on behalf of) the Project Developer for purposes other than those permitted under this Sub-Clause.

5.6. AGENCY'S USE OF PROJECT DEVELOPER'S DOCUMENTS

As between the Parties, the Project Developer shall retain the copyright and other intellectual property rights in the Specification, the Drawings and other documents made by (or on behalf of) the Project Developer. The Agency may, at his cost, copy, use, and obtain communication of these documents for the purposes of the Contract. They shall not, without the Project Developer's consent, be copied, used or communicated to a third party by the Agency, except as necessary for the purposes of the Contract in any case, whatsoever.

5.7. CONFIDENTIAL DETAILS

The Agency shall disclose all such confidential and other information as the Project Manager may reasonably require for verifying the Agency's compliance with the Contract.

The Agency acknowledges and agrees that all the information disclosed/communicated by Project Developer or which the Agency may have access to during the course of this Contract shall be considered as confidential and proprietary information. The Agency irrevocably agrees and undertakes and ensures that the Agency shall keep the same secret and confidential and not disclose the same without the prior written permission of Project Developer nor shall use or allow to be used any information other than for the due performance of the Agency's obligation under this Contract in any case whatsoever, failing which attract a penalty, as agreed by the Project Developer.

5.8. COMPLIANCE WITH LAWS

The Agency shall, in performing the Contract, comply with all applicable Laws in time. Unless otherwise stated elsewhere in the Contract:

(a) the Project Developer shall have obtained (or shall obtain) the planning, zoning or similar permission for the Permanent Works, and any other permissions described in the Specification as having been (or being) obtained by the Project Developer, and the Project Developer shall be responsible for the consequences arising out of not obtaining any requisite planning, zoning or similar permission; and

(b) the Agency shall give all notices, pay all taxes, workmen compensation, work contract tax, service tax, labour cess, minimum wages, PF, ESI, ESI cards, labour laws, statutory compliances, duties and fees, and obtain all permits, labour and other licenses etc. and approvals or any other applicable statutory taxes and deductions, as required by the Laws in relation to the execution and completion of the Works and the remedying of any defects; and the Agency shall indemnify and hold the Project Developer harmless against and from the consequences of any failure to do so. The Agency shall indemnify the Project Developer up to a 50% maximum value of total contract value.

(c) The Agency shall keep the Project Developer indemnified against any and all losses, claims or damages which may be caused by:

(i) damages to the common facilities and amenities, utilities, or any other project facilities in the project site for any reasons/causes attributable to the Agency.

(ii) failure by the Agency to comply with applicable laws and committing breach of any law, rule, or regulation or direction.

(iii) failure by the Agency to obtain or keep in force all statutory clearances or licenses, as required.

(iv) failure by the Agency to comply with the statutory bodies under State of Rajasthan or Central if in case, applicable, as may be in force from time to time.

(v) any accident, causality, damages or any other mis-happening etc., occurring during the construction work or during the operations.

(vi) Non-payment of taxes, dues and duties payable to the Government or any local authority whatsoever.

5.9. JOINT AND SEVERAL LIABILITY

If the Agency constitutes (under applicable Laws) a joint venture, consortium, partnership, whether registered or not, or other unincorporated grouping of two or more persons:

(a) these persons shall be deemed to be jointly and severally liable to the Project Developer for the performance of the Contract.

(b) these persons shall notify the Project Developer of their leader who shall have authority to bind the Agency and each of these persons; and

(c) the Agency shall not alter its composition or legal status without the prior consent of the Project Developer.

5.10. PRIVATE & CONFIDENTIAL DETAILS

The Agency shall treat the details of the Contract as private and confidential and shall not disclose the same to any third party except to the extent necessary to carry out obligations under this contract or to comply with applicable Laws. The Agency shall not publish or disclose any particulars of the Works in any trade or technical paper or elsewhere without

the previous consent of the Project Developer in any case whatsoever, failing which attract a penalty, as agreed by the Project Developer.

5.11. TAXES

Taxes shall mean the following, whether in force on the date hereof or imposed or levied after the date hereof:

a. All taxes, duties or any other applicable tax as imposed under any Applicable Law (whether within India or outside India) in connection with the Work or performance by the Agency/Sub-Agency of its obligations and responsibilities under this Contract.

b. All taxes on Agency's/Sub-Agency's income, profit, real and personal property; and

c. All applicable payroll, withholding, social security, workers' compensation and employment taxes and contributions imposed under any Applicable Law in connection with or measured by compensation (including without limitation wages and salaries) paid to employees of Agency/Sub-Agency (including without limitation taxes, health and welfare funds, pensions and annuities, disability insurance and all other similar social payments).

The Agency's rates and prices as contained in the Accepted Contract Sum have included for all rates, duties and taxes as may be imposed by the Government of India/Government of Rajasthan.

Agency should not consider the credit of input taxes in the rate analysis of the quoted rates. The Project Developer has a right to avail the benefit of input credit for GST on the actual value added to the material used in construction. The detailed procedure to achieve this shall be worked out with the Agency before awarding the Works.

In case the Agency is entitled for any refund of above taxes, necessary certificates regarding the use of materials for proposed Works will be issued by the Project Developer only after receiving a written information from the Agency.

Each payment made by the Project Developer from time to time to the Agency shall be subjected to the deduction of all Statutory Taxes, Labour Cess, or any other applicable taxes as per the provisions of the Rules and Regulations prevailing and amended from time to time.

All charges payable to Local Authorities, Royalties, and charges payable to Municipal Corporation etc. shall be borne and paid by the Agency related to the scope of Works.

Any savings as tax relief benefits with respect to rates, duties, and taxes as the result of the granting of tax incentives and concessions from the Government of India/Government of Rajasthan the required tax incentives and concessions for the Contract Works shall be returned and paid in favour of the Project Developer only after receiving a written information from the Agency.

5.12. REPRESENTATIONS AND WARRANTIES

The Agency represents and warrants to Project Developer that,

(i) It is a corporation duly incorporated, validly existing and in good standing under the laws of the jurisdiction in which it is incorporated.

(ii) It has the full capacity, power, authority, and the legal right to enter into this Agreement and to perform its obligations hereunder.

(iii) It has taken and will continue to take all necessary corporate action and further actions (including but without limitations the obtaining of necessary approval/consents in all applicable jurisdiction) on its part to authorize the execution and delivery of this Agreement and the performance of its obligations.

(iv) This Agreement and the transaction contemplated by it do not contravene or conflict with, violate, breach, or contravene any of its constituent documents or any law, regulation or official directive or any requirement of applicable laws or regulations or any contractual obligations of it.

(v) The execution of this Agreement and providing Services by the Agency to Project Developer does not and will not infringe upon any intellectual property rights.

(vi) There is no complaint, claim or litigation of any nature whatsoever outstanding, pending or threatened against it or its promoters, directors, officers or employees. The Agency undertakes to forthwith disclose to Project Developer of any such complaint, claim or litigation actual or threatened arising after the execution of this Agreement.

5.13. COVENANTS AND OBLIGATIONS OF THE AGENCY

a. Neither Agency nor its representatives/personnel shall not at any time use or attempt to use the Project Developer Trademark/ name or logo for any purpose including for the purpose of this Agreement unless specifically authorized by the Project Developer, in writing prior to such usage.

b. The Agency undertakes to obtain all the requisite license/permission/ authorizations and certificates under all the applicable laws and keep the same valid by renewing from time to time as required under the various Acts/ Laws and payment of all applicable taxes, levies, and duties including service tax, if and where required. The Agency shall maintain all the registers and records required to be maintained under the various labour enactments and rules framed there under.

c. The Agency shall ensure that it will employ as its personnel only those individuals who have attained majority as per law and undertakes not to act in violation against Labour Law or any law in force. The Personnel employed by Agency shall not have any claim whatsoever on the Project Developer, and shall not raise any Industrial dispute, either directly or indirectly, against the Project Developer, in respect of any of the service conditions or otherwise. It is further expressly clarified and agreed that in case of death or bodily injury to any such personnel appointed by Agency while carrying out any of the Services under this Contract, the Project Developer, shall not be liable or bound to pay any monetary compensation or otherwise be responsible in any way whatsoever. The Project Developer, shall have the right to call upon the Agency to replace any personnel of the Agency who in the sole opinion of the Project Developer, is jeopardizing the interest of the Project Developer, and the Agency shall forthwith comply with the demand of the Project Developer without any costs/ fees or charges.

d. The Agency agrees that Agency and any personnel assigned by the Agency shall at all times comply with all applicable laws, policy and procedures including relating to security/access restrictions as may be prescribed by the Project Developer at the Site.

e. The Agency shall not engage in any business activity, either by itself or through its subsidiaries, affiliates, or agents, which is in direct conflict with the interests of the Project

Developer or is detrimental to the interest of the Project Developer, unless it obtains the prior written consent of the Project Developer.

f. The Agency further warrants to the Project Developer that, during the term of this Agreement, the Services, and materials to be rendered or delivered hereunder, will be of the kind and quality designated and shall meet the requirements and specifications as determined in the Project Developer's sole and exclusive discretion and communicated to the Agency from time to time.

g. The Agency shall not claim any damages (liquidated or unliquidated), lien, set-off or counter claim on the material, document, information of the Project Developer in the Agency's possession or control.

h. The Project Developer shall also at its sole discretion have the right to set off, deduct and recover from the fees/charges and/or from any other sum payable to the Agency, any and all amounts which may be or become payable by the Agency to the Project Developer.

i. The Agency and its directors, partners and officers shall be solely liable for the payment of all taxes, duties, fines, labour cess, cesses, levies, penalties or any applicable statutory tax, deduction as the case may be, by whatever name called, as may become due and payable under the applicable laws in force from time to time in relation to the Services rendered pursuant to this Contract.

5.14. TIME VALIDITY

Time is the essence of this Contract agreement in so far as it relates to the observance, liabilities, or performance by the Agency of all or any of its obligations under this Contract.
The terms and conditions of the RFP shall form part of this General Conditions of Contract, in case of any ambiguity or contradiction in interpretation of RFP documents and General Conditions of Contract, then Clause no. 1.5 (Precedence of documents) shall prevail.

THE PROJECT Developer

5.15. RIGHT OF ACCESS TO THE SITE

The Project Developer shall give the Agency right of access to required parts of the Site within the time (or times) solely based on the discretion of the Project Developer as stated in the Appendix to RFP. The right may not be exclusive to the Agency. If, under the Contract, the Project Developer is required to give (to the Agency) right of access to any foundation, structure, plant, the Project Developer shall do so in the time and manner stated in the Specification. However, the Project Developer may withhold any such right until the Performance Guarantee has been received and on the satisfaction of the Project Developer.

If no such time is stated in the Appendix to RFP, the Project Developer shall give the Agency right of access to the Site within such times as may be required to enable the Agency to proceed in accordance with the program submitted under Sub-Clause 8.3 [Program].

If the Agency suffers delay and / or incurs Cost as a result of a failure by the Project Developer to give any such right within such time, the Agency shall give notice to the Project Manager and shall be entitled to:

(a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [Extension of Time for Completion], and

(b) payment of any such Cost, which shall be included in the Contract Price.

After receiving this notice, the Project Manager shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine these matters.

However, if and to the extent that the Project Developer's failure was caused by any error or delay by the Agency, including an error in, or delay in the submission of, any of the Agency's Documents, the Agency shall not be entitled to such extension of time or Cost and Project Developer shall not be liable to entertain the same.

Further if and to the extent that the Project Developer's failure was caused by any delay in consents or permission from any authority or due to restrictions imposed by any authority, the Agency shall not be entitled to payment of any such Cost mentioned in (b) above.

5.16. PERMITS, LICENSES OR APPROVALS

The Project Developer shall (where he is in a position to do so) provide reasonable assistance for documentation to the Agency at the request of the Agency to the extent the relevant authority requires:

(a) for the Agency's applications for any permits, licenses or approvals required by the Law of the Country:

(i) which the Agency is required to obtain under Sub-Clause 1.13 [Compliance with Laws]

(ii) for the delivery of Goods, including clearance through customs,

5.17. PROJECT DEVELOPER'S PERSONNEL

The Project Developer shall be responsible for ensuring that the Project Developer's Personnel and the Project Developer's other Agencies on the Site:

(a) co-operate with the Agency's efforts under Sub-Clause 4.6 [Co-operation], and

(b) take actions similar to those which the Agency is required to take under sub-paragraphs (a), (b) and (c) of sub-Clause 4.8 [Safety Procedures] and under Sub-Clause 4.18 [Protection of the Environment]

5.18. PROJECT DEVELOPER'S AUTHORITY

The Project Developer shall have the absolute authority to enforce compliance with the Contract Documents, on all questions relating to quantities, the acceptability of materials, equipment, or Works, the adequacy of the performance of the Work, and the interpretation of the Drawings and specifications. The decision of the Project Developer will be final and binding and shall only proceed to any payment if satisfied, under the contract agreement unless otherwise provided in the contract documents.

The Project Developer shall have the authority to stop the progress of work, or any part thereof as may be necessary to ensure the proper execution of the Work, to disapprove or reject the work which is defective, to demand the uncovering and inspection or testing of the work, to demand re-examination of the work, to issue interpretations and clarifications, to order changes or alterations in the Work over any other authority as provided elsewhere in the contract documents. The Project Developer shall not be liable for the results of any ruling, interpretation, decisions rendered, request, demand, instruction or order issued by

him. The Agency shall promptly comply with requests, demand, instructions, and order from the Project Developer.

5.19. LIMITATIONS AND RESPONSIBILITY

The Project Developer or its representatives has a right to review / suggest / guide / instruct the Agency and the Agency shall be bound to follow the same.

THE PROJECT MANAGER

5.20. PROJECT MANAGER'S DUTIES AND AUTHORITY

The Project Developer shall appoint the Project Manager who shall carry out the duties assigned to him in the Contract. The Project Manager's team shall include suitably qualified engineers and other professionals who are competent to carry out these duties.

The Project Manager shall have no authority to amend the Contract.

The Project Manager may exercise the authority attributable to the Project Manager as specified in or necessarily to be implied from the Contract.

The Project Manager shall have the absolute authority to enforce compliance with the Contract Documents, on all questions relating to quantities, the acceptability of materials, plant, equipment, or Works, the adequacy of the performance of the Work, and the interpretation of the Drawings and specifications, statutory labour and other legal compliances. The decision of the Project Manager shall be final and binding and shall proceed to any payment under the contract agreement unless otherwise provided in the contract documents.

The Project Manager shall have the authority to stop the progress of work or any part thereof as may be necessary to ensure the proper execution of the Work in order according to the satisfaction of the Project Developer, to disapprove or reject the work which is defective, to demand the uncovering and inspection or testing of the work, to demand re-examination of the work, to issue interpretations and clarifications, to order changes or alterations in the Work over any other authority as provided elsewhere in the contract documents. The Project Manager shall not be liable for the results of any ruling, interpretation, decisions rendered, request, demand, instruction, or order issued by him. The Agency shall promptly comply with requests, demand, instructions, statutory laws, and order from the Project Manager.

5.21. DELEGATION BY THE PROJECT MANAGER

The Project Manager may from time to time assign duties and delegate authority to assistants and may also revoke such assignment or delegation. These assistants may include a resident engineer, and / or independent inspectors, and/or any third entity appointed by Project Developer to inspect and / or test items of Plant and / or Materials, or to perform any other duties to assist the Project Manager which Project Developer may deem necessary. The assignment, delegation or revocation shall be in writing and shall not take effect until copies have been received by both parties. However, unless otherwise

agreed by both Parties, the Project Manager shall not delegate the authority to determine any matter in accordance with Sub-Clause 3.5 [Determinations].

Assistants shall be suitably qualified persons, who are competent to carry out these duties and exercise this authority, and who are fluent in English or any other language for communications defined in Sub-Clause 1.4 [Law and Language].

Each assistant, to whom duties have been assigned or authority has been delegated, shall only be authorized to issue instructions to the Agency to the extent defined by the delegation. Any approval, check, certificate, consent, examination, inspection, instruction, notice, proposal, request, test, or similar act by an assistant, in accordance with the delegation, shall have the same effect as though the act had been an act of the Project Manager. However:

(a) any failure to disapprove any work, Plant or Materials shall not constitute approval, and shall therefore not prejudice the right of the Project Manager to reject the work, Plant or Materials.

(b) if the Agency questions any determination or instruction of an assistant, the Agency may refer the matter to the Project Manager, who shall promptly confirm, reverse, or vary the determination or instruction.

5.22. INSTRUCTIONS OF THE PROJECT MANAGER

The Project Manager may issue to the Agency (at any time) instructions and additional or modified Drawings which may be necessary for the execution of the Works and the remedying of any defects, all in accordance with the Contract. The Agency shall only take instructions from the Project Manager, or from an assistant to whom the appropriate authority has been delegated under this Clause. If an instruction constitutes a Variation, Clause 13 [Variations and Adjustments] shall apply.

The Agency shall comply with the instructions given by the Project Manager or delegated assistant, on any matter related to the Contract. Whenever practicable, their instructions shall be given in writing. If the Project Manager or a delegated assistant:

(a) gives an oral instruction,

(b) receives a written confirmation of the instruction, from (or on behalf of) the Agency, within two working days after giving the instruction, and

(c) does not reply by issuing a written rejection and / or instruction within seven days after receiving the confirmation.

Then the confirmation shall constitute the written instruction of the Project Manager or delegated assistant (as the case may be).

If the Agency fails or refuses to comply with any instruction issued by the Project Manager or delegated assistant, the Project Developer may after 7 days' notice from the Project Manager to the Agency requiring such compliance, carry out or deploy other Agencies to do so. All costs incurred shall be recoverable by the Project Developer from the Agency.

5.23. REPLACEMENT OF THE PROJECT MANAGER

If the Project Developer intends to replace the Project Manager at his sole discretion, the Project Developer may, before the intended date of replacement, inform the Agency about such intended replacement of the Project Manager.

5.24. DETERMINATIONS

Whenever these Conditions provide that the Project Manager shall proceed in accordance with this sub-Clause 3.5 to agree or determine any matter, the Project Manager shall consult with each Party in an endeavour to reach agreement. If agreement is not achieved, the Project Manager shall make a fair determination in accordance with the Contract, taking due regard of all relevant circumstances.

The Project Manager shall give notice to both Parties of each agreement or determination, with supporting particulars. Each Party shall give effect to each agreement or determination unless and until revised under Clause 20 [Claims, Disputes and Arbitration].

THE AGENCY

5.25. AGENCY'S GENERAL OBLIGATIONS

The Agency shall design (to the extent specified in the contract), execute and complete the Works in accordance with the Contract and with the Project Manager's instructions, and shall remedy any defects in the Works.

The Agency shall provide the Plant and Agency's Documents specified in the Contract, and all Agency's Personnel, Goods, consumables and other things and services, whether of a temporary or permanent nature, required in and for this design, execution, completion and remedying of defects. The Agency shall prepare the Agency's Documents in sufficient details to satisfy all regulatory approvals, to provide to the suppliers and construction personnel with sufficient instructions to execute the works, and to describe the operation of the completed Works from time to time.

The Agency shall be responsible for the adequacy, stability and safety of all Site operations and of all methods of construction. Except to the extent specified in the Contract, the Agency (i) shall be responsible for all Agency's Documents, Temporary Works and such design of each item of Plant and Materials as is required for the item to be in accordance with the Contract or any other work, and (ii) shall not otherwise be responsible for the design or specification of the Permanent Works.

The Agency shall, whenever required by the Project Manager, submit details of the arrangements and methods which the Agency proposes to adopt for the execution of the Works. No significant alteration to these arrangements and methods shall be made without this having previously been notified to the Project Manager.

If the Contract specifies that the Agency shall design any part of the Permanent Works, then unless otherwise stated elsewhere in the Contract.

(a) The Agency shall submit to the Project Manager the Agency's Documents for this part in accordance with the procedures specified in the Contract.
(b) These Agency's Documents shall be in accordance with the Specification and Drawings, shall be written in the English language and language for communications defined in Sub-

Clause 1.4 [Law and Language], and shall include additional information required by the Project Manager to add to the Drawings for co-ordination of each Party's designs.

(c) The Agency shall be responsible for this part, and it shall, when the Works are completed, be fit for such purposes for which the part is intended as are specified in the Contract; and

(d) Prior to the commencement of the Tests on Completion, the Agency shall submit to the Project Manager the 3 set of "as-built" documents and operation and maintenance manuals in accordance with the Specification and in sufficient detail for the Project Developer to operate, maintain, dismantle, reassemble, adjust and repair this part of the Works. Such part shall not be considered to be completed for the purposes of taking-over under sub-Clause 10.1 [Taking Over of the Works and Sections] until these documents and manuals have been submitted to the Project Manager.

The design (to the extent mentioned in the Contract), the Agency's documents, the execution and completion of the Works shall all comply fully with the applicable Laws, national specifications, conditions and stipulations (if any) imposed by any authorities.

5.26. PERFORMANCE GUARANTEE

Performance guarantee shall be 5% of Contract Value (incl. GST) in the form of a bank guarantee as mentioned below:

The Agency shall submit performance guarantee within 10 days after receiving the Letter of Acceptance/Intent, provide to the Project Developer a single, irrevocable, and unconditional performance guarantee from the Scheduled/Nationalized Bank approved by the Project Developer for an amount stated ABOVE or such other amount as may be otherwise specified in the Contract towards security for due performance of the Contract having Jaipur as jurisdiction. Such performance guarantee shall be valid and enforceable 60 days beyond date of issuance of Taking Over Certificate by the Project Developer for Works. No interest will be paid on the Bank Guarantee.

The Performance Guarantee shall strictly be in the form annexed to the Contract Documents and shall be executed on a non-judicial stamp paper having a jurisdiction of Jaipur, Rajasthan. The cost of obtaining such Performance Guarantee shall be borne and paid by the Agency alone.

The submission of the Performance Bank Guarantee shall be a condition precedent to the Contract.

The Agency shall ensure that the Performance Guarantee is valid and enforceable until the Agency has executed and completed the Works and obtained Taking Over/Completion Certificate and 30 days thereafter. If the terms of the Performance Guarantee specify its expiry date, and the Agency has not become entitled to receive the Taking Over/Completion Certificate by the date 30 days prior to the expiry date, the Agency shall immediately extend the validity of the Performance Guarantee until minimum of 30 days beyond the extended Time for Completion of the Works. If the Agency fails to extend the validity of such bank guarantee as stated above then Agency hereby signing this Contract, gives an unequivocal, unconditional and irrevocable authority to the Project Developer to invoke this bank

guarantee without any prior notice to the Agency and he shall not raise any objection and have no claim, whatsoever, against such action of Project Developer.

The Project Developer shall return the Performance Guarantee to the Agency within 75 days after receiving a copy of the Taking Over/Completion Certificate.

5.27. AGENCY'S REPRESENTATIVE/AGENCY'S TEAM

The Agency shall appoint the Agency's Representative and shall give him all authority necessary to act on the Agency's behalf under the contract.

The Agency shall also appoint a designated team of agreed personnel who has the expertise and are competent to complete the contract/work as per the technical specifications and other conditions of contract in accordance with the satisfaction of Project Developer.

Unless the Agency's Representative is named in the Contract, the Agency shall, prior to the Commencement Date, submit to the Project Manager for consent of the name and particulars of the person the Agency proposes to appoint as Agency's Representative where the consent is withheld or subsequently revoked, or if the appointed person fails to act as Agency's' Representative, the Agency shall similarly submit the name and particulars of another suitable person for such appointment.

The Agency shall not, without the prior consent of the Project Manager, revoke the appointment of the Agency's Representative or appoint a replacement.

The whole time of the Agency's Representative shall be given to directing the Agency's performance of the Contract. If the Agency's Representative is to be temporarily absent from the Site during the execution of the Works, a suitable replacement person shall be appointed, subject to the Project Manager's prior consent, and the Project Manager shall be notified accordingly.

The Agency's Representative shall, on behalf of the Agency, receive instructions under Sub-Clause 3.3 [Instructions of the Project Manager].

The Agency's Representative may delegate any powers, functions and authority to any competent person, and may at any time revoke the delegation. Any delegation or revocation shall not take effect until the Project Manager has received prior notice signed by the Agency's Representative, naming the person and specifying the powers, functions and authority being delegated or revoked.

The Agency's Representative and all these persons shall be fluent in the language for communications defined in Sub-Clause 1.4 [Law and Language].

Notwithstanding the above provisions in this Sub-Clause, Agency shall comply with additional requirements as specified in the Annexure to the General Conditions which shall form the part of the General Conditions.

5.28. SUB-AGENCYS

The Agency shall not subcontract the whole or part of the Works. The Agency shall not engage or permit the engagement of any Subcontractor for any part of the Works without the consent of the Project Manager / Project Developer, which consent shall not be unreasonably withheld. The Agency shall provide such reasonable details of the Subcontractor as may be required by the Project Manager/Project Developer, for providing consent.

The Agency shall give the Project Manager not less than 30 days' notice of the intended date of commencement of each Subcontractor's work, and of the commencement of such work on the Site.

It shall be a condition of any sub-contracting to which Sub-Clause 4.4 refers that the sub-contract shall include provisions which would entitle the Project Developer's discretionary rights to require:

(a) the subcontract to be assigned to the Project Developer under Sub-Clause 4.5 [Assignment of Benefit of Sub-contract] (if or when applicable) or if the Sub Agency has undertaken a continuing obligation to the Agency and if such obligation extends beyond the Contract Period, the assignment of the benefit of such obligation or in the event of termination of the Agency's employment under Sub-Clause 15.2 [Termination by Project Developer]; and/or

(b) the sub-Agency to enter into a novation agreement of the sub-contract with the Project Developer only if the Project Developer agrees/approves and if the Project Developer so requires upon the termination of the Agency's employment under this Contract.

The Agency shall remain absolute liable under the Contract for all -contracted work and shall be responsible for acts or defaults of his Sub-Agency, his agents, or employees, as if they were the acts or defaults of the Agency as they are working under the Agency himself. The Agency shall make good any damage or loss suffered by the Project Developer by reason of any breach of contract, repudiation, default, or failure (whether total or partial), on the part of his Sub-Agency, and shall indemnify the Project Developer against any damage, liability, claim, or loss arising there from. The indemnification value shall be the total agreed contract value between two parties.

If any dispute if so, arises by the default of Agency or Sub-Agency, then in no case, whatsoever, the liability of the Project Developer shall arise and the liability shall vest solely and exclusively upon the Agency.

5.29. ASSIGNMENT OF BENEFIT OF SUB-CONTRACT

If a Sub-Agency's obligations extend beyond the expiry date of the relevant Defects Notification Period and the Project Manager, prior to this date, instructs the Agency to assign the benefit of such obligations to the Project Developer, then the Agency shall do so. The Project Developer shall not be liable for any rights which the Sub Agency may have against the Agency unless expressly stated otherwise in the Contract Agreement. For any claim, damage, obligation, lien etc. of the Sub-Agency to the Agency, the Project Developer shall not be liable in any case, meaning thereby, the whole and sole responsibility for any act of the sub-Agency shall vest upon the Agency and the Project Developer shall in no case, be liable towards any acts of the sub-Agency directly or indirectly

5.30. CO-OPERATION

The Agency shall co-operate, co-ordinate and allow appropriate opportunities for carrying out work to:

(a) The Project Developer's Personnel,

(b) any other Agencies deployed by the Project Developer, and

(c) The personnel of any legally constituted public authorities,

Who may be deployed in the execution on or near the Site of any work not included in the Contract.

Services for these personnel and other Agencies may include the use of Agency's Equipment, Temporary Works or access arrangements which shall be provided by the Agency without any additional cost to the Project Developer.

5.31. COORDINATION WITH OTHER CONTRACTORS:

The Contractor shall offer all co-operations & co-ordinate with all other Contractors employed directly by the Developer, for carrying out their specialized works on site to complete the project smoothly without any hindrance.

5.32. SETTING OUT

The Agency shall set out the Works in relation to original points, lines and levels of reference specified in the Contract or notified by the Project Manager. The Agency shall be responsible for the correct positioning of all parts of the Works, and shall rectify any error in the positions, levels, dimensions, or alignment of the Works in line with the satisfaction of the Project Manager.

The Project Manager shall provide such points of reference, but the Agency shall use his reasonable efforts to verify his accuracy before they are used and shall be responsible for subsequent Works.

5.33. SAFETY PROCEDURES

The Agency shall:

(a) Comply with all applicable safety rules, regulations, laws, byelaws, orders, notifications, legislature pronouncements etc.

(b) Take care for the safety of all persons entitled to be on the Site,

(c) Use reasonable efforts to keep the Site and Works clear of unnecessary obstruction, negligence, and nuisance to avoid danger to these persons,

(d) Provide fencing, lighting, guarding, and watching of the Works until completion and taking over under Clause 10 [Project Developer's Taking Over], and

(e) provide any Temporary Works (including roadways, footways, guards and fences) which may be necessary, because of the execution of the Works, for the use and protection of the public and of owners and occupiers of adjacent land.

(f) Comply with the additional requirements as specified under Project Safety Plan in Annexure to the General Conditions which shall form part of the General Conditions.

5.34. QUALITY ASSURANCE

The Agency shall institute a quality assurance system as detailed out in Annexure to the General Conditions which shall form part of the General Conditions to demonstrate compliance with the requirements of the Contract. The system shall be in accordance with the details stated in the Contract. The Project Manager shall be entitled to audit any aspect of the system.

Details of all procedures and compliance documents shall be submitted to the Project Manager for information before each design and execution stage is commenced. When any document of a technical nature is issued to the Project Manager, evidence of the prior approval by the Agency himself shall be apparent on the document itself.

Compliance with the quality assurance system shall not relieve the Agency of any of his duties, obligations or responsibilities under the Contract.

Third party Quality Testing for whole works will be done according to Specifications and Agency/ Laboratory will be approved by MWCJ and cost of testing will be borne by Agency. Detailed test reports for carry out shall be submitted as per MWCJ requirement.

5.35. SITE DATA

The Project Developer shall have made available to the Agency for his information, prior to the Base Date, all available data in the Project Developer's possession on sub-surface and hydrological conditions at the Site, including environmental aspects. The Project Developer shall similarly make available to the Agency all such data which come into the Project Developer's possession after the Base Date. The Agency shall be responsible for interpreting all such data.

The Agency shall be deemed to have obtained all necessary information as to risks, contingencies and other circumstances which may influence or affect the RFP or Works. The Agency shall be deemed to have inspected and examined the Site, its surroundings, the above data and other available information, and to have been satisfied before submitting the RFP as to all relevant matters, including (without limitation):

(a) The form and nature of the Site, including sub-surface conditions,
(b) The hydrological and climatic conditions,
(c) The extent and nature of the work and goods necessary for the execution and completion of the Works and remedying of any defects,
(d) The Laws, procedures and labour practices of the Country, and
(e) The Agency's requirements for access, accommodation, facilities, personnel, power, transport, water and other services.
(f) Adjacent surrounding buildings/properties, access roads, regulation and/or stipulations by local authorities on the movement of traffic.

Agency shall have no claim whatsoever on account of not understanding or obtaining necessary information, and/or incorrect interpretation of such information or any related provisions in the contract document only if a prior written intimation has been made to the Project Manager not exceeding 15 days' time. After perusing the specifications of the Agency, both parties will then mutually agree on the matter.

5.36. SUFFICIENCY OF THE ACCEPTED CONTRACT AMOUNT

The Agency shall be deemed to:

(a) have satisfied himself as to the correctness and sufficiency of the Accepted Contract Amount, and
(b) have based the Accepted Contract Amount on the data, interpretations, necessary information, inspections, examinations and satisfaction as to all relevant matters referred to in Sub-clause 4.10 [Site Data].

Unless otherwise stated in the Contract, the Accepted Contract Amount covers entire consideration for all the Agency's obligations under the Contract (including those under Provisional Sums, if any) and all things necessary for the proper execution and completion of the Works and the remedying of any defects. Notwithstanding anything to the contrary contained in the Contract Documents, the Accepted Contract Amount shall cover material cost inclusive of excise duty, income tax, GST paid at the time of purchase, labour cess or any other cess paid at the time of availing such a service , turn over tax, octroi, levies, taxes or duties of concerned authorities, royalties, insurances, licenses if any and expense towards transportation, loading, unloading, security, storing at site, safely handling at site, expected wastages, labour (skilled / unskilled), tools, plants and equipment, all overhead costs, Agencies' profit, miscellaneous expenditure properly incurred or to be incurred whether on or off the site including overhead and other charges properly allocable thereto for an item of work.

5.37. UNFORESEEABLE PHYSICAL CONDITIONS

In this Sub-Clause, "physical conditions" means natural physical conditions and man-made and other physical obstructions and pollutants, which the Agency encounters at the Site when executing the Works, including sub-surface and hydro-logical conditions but excluding climatic conditions.

If the Agency encounters adverse physical conditions which he considers having been Unforeseeable under force majeure conditions only, the Agency shall give notice to the Project Manager as soon as practicable and both parties shall accept the same. The Agency has been informed (and shall be deemed to have been informed by virtue of this Contract) of the hard rock substrata conditions at the Site, de-watering during contract period and the conditions described in the Annexure to General Conditions and accordingly the said physical conditions shall not be considered to be Unforeseeable only.

This notice shall describe the physical conditions, so that they can be inspected by the Project Manager and shall set out the reasons why the Agency considers them to be Unforeseeable. The Agency shall continue executing the Works, using such proper and reasonable measures as are appropriate for the physical conditions, and shall comply with any instructions which the Project Manager may give. If an instruction constitutes a Variation, Clause 13 [Variations and Adjustments] shall apply.

If and to the extent that the Agency encounters physical conditions which are Unforeseeable, gives such a notice, and suffers delay and / or incurs Cost due to these conditions the Agency shall be entitled subject to Sub-Clause 20.1 [Agency's Claims] to:

(a) An extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [Extension of Time for Completion], and
(b) payment of any such Cost, which shall be included in the Contract Price.

After receiving such notice and inspecting and / or investigating these physical conditions, the Project Manager shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine (i) whether and (if so) to what extent these physical conditions were

Unforeseeable, and (ii) the matters described in sub paragraphs (a) and (b) above related to this extent.

However, before additional Cost is finally agreed or determined under sub-paragraph (ii), the Project Manager may also review whether other physical conditions in similar parts of the Works (if any) were more favourable that could reasonably have been foreseen when the Agency submitted the RFP. If and to the extent that these more favourable conditions were encountered, the Project Manager may proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine the reductions in Cost which were due to these conditions, which may be included (as deductions) in the Contract Price and Payment Certificates. However, the net effect of all adjustments under sub-paragraph (b) and all these reductions, for all the physical conditions encountered in similar parts of the Works, shall not result in a net reduction in the Contract Price.

The Project Manager may take account of any evidence of the physical conditions foreseen by the Agency when submitting the RFP, which may be made available by the Agency, but shall not be bound by any such evidence.

5.38. RIGHTS OF WAY AND FACILITIES

The Agency shall bear all costs and charges for special and / or temporary rights-of-way which he may require and granted by the Project Developer, including those for access to the Site. The Agency shall also obtain, at his risk and cost, any additional facilities outside the Site which he may require for the purposes of the Works.

5.39. AVOIDANCE OF INTERFERENCE

The Agency shall not interfere unnecessarily or improperly with:

(a) the convenience of the public and to the Project Developer's units, or

(b) the access to and use and occupation of all roads and footpaths, irrespective of whether they are public or in the possession of the Project Developer or of others.

The Agency shall indemnify up to the agreed contract value and hold the Project Developer harmless against and from all damages, losses and expenses (including legal fees and expenses) resulting from any such unnecessary or improper interference.

5.40. ACCESS ROUTE

The Agency shall be deemed to have been satisfied as to the suitability and availability of access routes to the Site. The Agency shall use reasonable efforts to prevent any road or bridge from being damaged by the Agency's traffic or by the Agency's Personnel. These efforts shall include the proper use of appropriate vehicles and routes.

Except as otherwise stated in these Conditions:

(a) The Agency shall (as between the Parties) be responsible for any maintenance which may be required for his use of access routes.

(b) The Agency shall provide all necessary signs or directions along access routes and shall obtain any permission which may be required from the relevant authorities for his use of routes, signs and directions.

(c) The Project Developer shall not be responsible for any claims which may arise from the use or otherwise of any access route.
(d) The Project Developer does not guarantee the suitability or availability of particular access routes, and
(e) Costs due to non-suitability or non-availability, for the use required by the Agency, of access routes shall be borne and paid by the Agency.

5.41. TRANSPORT OF GOODS/MATERIAL

Unless otherwise stated elsewhere in the Contract:

(a) The Agency shall give the Project Manager not less than 30 days' notice of the date on which any Plant or a major item of other Goods/Material will be delivered to the Site.
(b) The Agency shall be responsible for packing, loading, transporting, receiving, unloading, storing and protecting all Goods/Material and other things required for the Works; and
(c) The Agency shall indemnify up to the agreed contract value and hold the Project Developer harmless against and from all damages, losses and expenses (including legal fees and expenses) resulting from the transport of Goods/Material and shall negotiate and pay all claims arising from their transport.

5.42. AGENCY'S EQUIPMENT

The Agency shall be responsible for all Agency's Equipment. When brought on to the Site, Agency's Equipment shall be deemed to be exclusively intended for the execution of the works. The Agency shall not remove from the Site any major items of Agency's Equipment without the consent of the Project Manager. However, consent shall not be required for vehicles transporting Goods/Material or Agency's Personnel off site.

Agency's Equipment which is owned by the Agency (either directly or indirectly) shall be deemed to be for exclusive use of Works with effect from its arrival on the Site. However, it is hereby clarified that such exclusive use of the equipment's at Works shall not:

(a) Affect the responsibility or liability of the Agency,
(b) Prejudice the right of the Agency to the sole use of the Agency's Equipment for the purpose of the Works, or
(c) Affect the Agency's responsibility to operate and maintain Agency's Equipment or any risk thereof. The personnel involved in operation of any construction equipment shall be experienced, careful and skilled enough to undertake such responsibilities.

5.43. PROTECTION OF THE ENVIRONMENT

The Agency 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 and adhere to Central and State Pollution Control norms, MoEF, if applicable.

The Agency shall ensure that emissions, surface discharges and effluent from the Agency's activities shall not exceed the values indicated in the Specification and shall not exceed the values prescribed by applicable Laws.

The Agency shall follow the Project Developer's Environment Management System (EMS) established at site. The Agency shall read Project Developer's Sustainability Policy, EHS Policy, Standard Operating Procedures, and relevant documents prior to commencement of Works. Project Developer will give necessary awareness to the Agency's personnel on EMS and Green building implementation requirements at site**. Specific details are provided in the Annexure to the General Conditions which shall form part of the General Conditions. Vendor on boarded needs to sign the code of conduct and abide by it.**

5.44. ELECTRICITY, WATER AND GAS

The Agency shall be responsible for the provision of power, water and other services required for carrying out Works.

The Agency shall be entitled to use for the purposes of the Works such supplies of electricity, water, gas and other services as may be available on the Site and of which details and prices are given in the Specification. The Agency on its own cost Project shall arrange the apparatus necessary for measuring the use of these services by the Agency and Project Manager shall be responsible for recording the quantities consumed. If the Agency is unable to arrange the apparatus, the Project Developer can arrange the same if it shall be charged extra.

The quantities consumed and the amounts due (at these prices) for such services shall be agreed or determined by the Project Manager in accordance with Sub-Clause 2.5 [Project Developer's Claims] and Sub-Clause 3.5 [Determinations]. The Agency shall pay these amounts to the Project Developer.

Agency shall comply with additional requirements as specified in the Annexure to the General Conditions which shall form part of the General Conditions.

5.45. PROJECT DEVELOPER'S EQUIPMENT AND FREE-ISSUE MATERIAL

The Project Developer shall make the Project Developer's Equipment (if any) available for the use of the Agency in the execution of the Works in accordance with the details, arrangements and prices stated in the Specification or the Schedules unless otherwise stated in the Specification or the Schedules:

(a) The Project Developer shall be responsible for the Project Developer's Equipment, except that

(b) The Agency shall be responsible for each item of Project Developer's Equipment whilst any of the Agency's Personnel is operating it, driving it, directing it or in possession or control of it.

The appropriate quantities and the amounts due (at such stated prices) for the use of Project Developer's Equipment shall be agreed or determined by the Project Manager in accordance with Sub-Clause 2.5 [Project Developer's Claims] and Sub-Clause 3.5 [Determinations]. The Agency shall pay these amounts to the Project Developer.

The Project Developer shall supply, free of charge, the "free-issue materials" (if any) in accordance with the details as stated in the Specification. The Project Developer shall, at his risk and cost, provide these materials at the time and place specified in the Contract. The Agency shall then visually inspect them and shall promptly give notice to the Project Manager of any shortage, defect or default in these materials within a stipulated time period of 7 days. Unless otherwise agreed by both Parties, the Project Developer shall immediately rectify the notified shortage, defect or default.

After this visual inspection, the free-issue materials shall come under the care, custody, and control of the Agency. The Agency's obligations of inspection, care, custody, and control shall not relieve the Agency of liability for any shortage, defect or default not apparent from a visual inspection.

5.46. PROGRESS REPORTS

Unless otherwise stated elsewhere in the Contract, daily, weekly and monthly progress reports shall be prepared by the Agency and submitted to the Project Manager in soft copies and hard copy as required. The daily and weekly progress reports shall commence from the date of commencement of Works. The first monthly report shall cover the period up to the end of the first calendar month following the Commencement Date. Reports shall be submitted monthly thereafter, each within 7 days after the last day of the period to which it relates.

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

Each report shall include:

(a) Charts and detailed descriptions of progress, including each stage of design (if any), Agency's Documents, procurement, manufacture, delivery to Site, construction, erection and testing; and including these stages for work by each nominated Subcontractor (as defined in Clause 5 [Nominated Sub-Agencies]),

(b) Photographs showing the status of progress on the Site.

(c) For the manufacture of each main item of Plant and Materials, the name of the manufacturer, manufacture location, percentage progress, and the actual or expected dates of:

(i) Commencement of manufacturing,

(ii) Agency's inspections,

(iii) Tests, and

(iv) Shipment and arrival at the Site.

The details described in Sub-Clause 6.10 [Records of Agency's Personnel and Equipment]. Copies of quality assurance documents, test results and certificates of Materials.

(d) list of notices given under Sub-Clause 2.5 [Project Developer's Claims] and notices given under Sub-Clause 20.1 [Agency's Claims].

(e) safety statistics, including details of any hazardous incidents and activities relating to environmental aspects and public relations; and

(f) Comparisons of actual and planned progress, with details of any events or circumstances which may jeopardize the completion in accordance with the Contract, and the measures being (or to be) adopted to overcome delays.

Notwithstanding the reports listed out in sub clause (a) to (h) above, the Agency shall also comply all the reporting procedures in line with the Project Quality Plan & Project Safety Plan as covered within the contract documents.

5.47. SECURITY OF THE SITE

Unless otherwise stated elsewhere in the Contract:

(a) the Agency shall be responsible for keeping unauthorized persons off the Site, and

(b) authorized persons shall be limited to the Agency's Personnel and the Project Developer's Personnel; and to any other personnel notified to the Agency by the Project Developer or the Project Manager, as authorized personnel of the Project Developer's other Agencies on the Site.

The Agency shall always at its cost provide adequate number of watchmen to guard the Site, materials and equipment, to the satisfaction of the Project Developer's Representative/ Project Manager. The Agency shall always be fully responsible for the security of all materials and equipment on the Site, whether its own or those of any Sub-Agency. Neither the Project Developer nor the Project Developer's Representative/Project Manager shall be responsible for any loss due to theft, fire, accident or any other reasons, whatsoever. Further, if any loss is suffered by the Project Developer, the Project Manager or the Project Developer's Representative due to any theft, fire, accident or other reasons, whatsoever, the Agency shall indemnify and hold harmless the Project Developer, the Project Manager or the Project Developer's Representative for such losses up to a maximum amount of the contract value.

The Project Developer may provide a security arrangement in his own interest. However, such security arrangement shall not be responsible for safeguarding the Agency's material, equipment or access.

5.48. AGENCY'S OPERATIONS ON SITE

The Agency shall confine his operations to the Site, and to any additional areas which may be obtained by the Agency and agreed by the Project Manager as working areas. The Agency shall take all necessary precautions to keep Agency's Equipment and Agency's Personnel within the Site and these additional areas, and to keep them off adjacent land.

During the execution of the Works, the Agency shall keep the Site free from all unnecessary obstruction and shall store or dispose of any Agency's Equipment or surplus materials. The Agency shall clear away and remove from the Site any wreckage, unfinished and Temporary Works which are no longer required as to the satisfaction of the Project Developer.

Upon the issue of instructions by Project Manager, the Agency shall clear away and remove from that part of the Site and Works to which the instructions refer, all Agency's Equipment, surplus material, wreckage, unfinished and Temporary Works as to the satisfaction of the Project Developer. The Agency shall leave that part of the Site and the Works in a clean and safe condition. However, the Agency may retain on Site, during the Defects Liability Period, such Goods as are required for the Agency to fulfil obligations under the Contract.

5.49. FOSSILS

All fossils, coins, articles of value or antiquity, and structures and other remains or items of geological or archaeological interest found on the Site shall be placed under the care and authority of the Project Developer. The Agency shall take reasonable precautions to prevent Agency's Personnel or other persons from removing or damaging any of these findings.

The Agency shall, upon discovery of any such finding, promptly give notice to the Project Manager, who shall issue instructions for dealing with it. If the Agency suffers delay and / or incurs Cost from complying with the instructions, the Agency shall give a further notice to the Project Manager and shall be entitled subject to Sub-Clause 20.1 [Agency's Claims] to:

(a) an extension of time for any much delay, if completion is or will be delayed, under Sub-Clause 8.4 [Extension of Time for Completion] and

(b) payment of any such Cost, which shall be included in the contract Price.

After receiving this further notice, the Project Manager shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine these matters.

5.50. ORDERING MATERIALS

The Agency shall place his orders for specified materials as soon as possible after notification of acceptance/intent of his RFP or at such times as may be specifically stated elsewhere herein for any material. If, in the opinion of the Project Manager, the Agency by his failure to order any specified material, or by his failure to deliver on to the job any specified material within the time stated for same, causes interruption or delay in the progress of the Works, then the Project Developer shall be entitled to purchase such specified materials in whatever quantities he deems necessary and at the rates prevailing in local markets at the time of purchase and all costs consequent thereon or incidental thereto including delivery charges shall be borne by the Agency and shall be deducted from monies due to or to become due to him under this Contract by means of a variation and no profit shall be allowed to the Agency in respect of such items. Agency will not have any right to challenge the decision of the Project Developer in any manner to purchase such materials by the Project Developer.

The Agency shall on quarterly basis submit to the Project Manager a detailed procurement schedule in for major equipment and materials indicating the planned and actual dates for ordering and delivery of major materials and equipment's and Project Developer has a right to change the schedule depending upon the timelines indicated by Project Developer and the Agency is obligated to amend/change its schedule on the advice of Project Developer if the set time lines have not been met within the stipulated period.

5.51. SITE MEETINGS

Agency shall attend site meetings when requested by the Project Manager from time to time and shall make available a responsible representative conversant with the Works and with authority to accept and make decisions and act on his behalf. The Agency shall submit to

the Project Manager, within 2 days prior to the meeting an agenda listing site problems, variations or defect works instructed by the Project Manager, the program of Works or any other matters relating to the Contract for discussion during the meeting.

5.52. PUBLIC AND PRIVATE SERVICES

a) The Agency must ascertain and confirm for himself the exact routes and locations of all existing services whether or not shown on the Drawings. Prior to commencement of any Works, the Agency shall carry out extensive site investigations and make additional records by means of cable detection equipment, exploratory trial holes and/or other approved methods.

b) The Agency shall notify the Project Manager and other relevant authorities of any pipe, cable, duct, service main etc. buried or exposed at the site before commencement of work or encountered during the progress of the Works. The Agency shall protect, uphold and maintain all pipes, cables, ducts, drains, sewers and service mains including any wrappings or special lagging to same during the execution of the Works. Any damage due to a cause within the Agency's control shall be made good as directed by the Project Manager at the Agency's expense and the Agency shall also indemnify the Project Developer against any claims arising there from up to the maximum amount of the contract value. The Agency shall sequence the Works to accommodate any diversion works to be undertaken by the various Authorities responsible for the services and extend all necessary co-operation and the provision of suitable access to the site for their workmen or Agencies. The charges levied by the various Authorities for service diversions shall be borne by the Project Developer.

5.53. DUMPING OF UNWANTED DEBRIS, ETC.

The Agency shall not dump Unwanted Debris, debris, chemicals or any noxious or etc. polluting matter at the Site or any vacant land or at the roadside or into any drain or canal or any other kind of waste, excreta etc. All debris arising from the Agency's occupation shall be collected, stored, and thereafter removed from the Site to a permitted dumping ground, at the sole expense of the Agency as indicated by the Project Manager.

The Agency shall be responsible for obtaining the necessary permits for dumping of Unwanted Debris, etc and ensuring that the carting operation does not cause any spill overs on or any damage to the public roads. The Agency shall produce necessary documentary evidence of the permits to the Project Manager and shall fully indemnify the Project Developer against any claims relating to the carting operation up to the maximum amount of the contract value.

5.54. SITE HYGIENE

The Agency shall keep the Site free from stagnant water and provide temporary drainage to ensure that no stagnant water remains at the Site including dewatering in monsoon seasons or shall keep the site free from unhygienic conditions which may hamper the development progress at the site as indicated by the Project Manager. Such dewatering shall not be allowed to drain into the public drains or any other non-identified channels, for the same, the Agency is obligated to ask Project Manager to identify the channels where dewatering can be made. The Agency shall not leave empty containers or receptacles capable of collecting water and forming breeding places for mosquitoes in the open and shall take all necessary steps to prevent the breeding of mosquitoes on the Site and shall act as per the instructions of Project Manager.

6. NOMINATED SUB-AGENCYS

6.1. DEFINITION OF "NOMINATED SUB-AGENCY"

In the Contract, "nominated Sub-Agency" means a Sub-Agency:

(a) who is stated in the Contract as being a nominated Sub-Agency, or

(b) whom the Project Developer instructs Agency to appoint for any work which the Project Developer feels deem fit or,

(c) whom the Project Manager, under clause 13 [Variations and Adjustments], instructs the Agency to appoint as a Subcontractor.

6.2. OBJECTION TO NOMINATION

The Agency shall not be under any obligation to appoint a nominated Subcontractor against whom the Agency raises reasonable objection by notice to the Project Manager as soon as practicable, with supporting particulars. An objection shall be deemed reasonable if it arises from (among other things) any of the following matters unless the Project Developer agrees to take responsibility of such nomination.

(a) there are reasons to believe that the Subcontractor does not have enough competence, resources or financial strength.

(b) the subcontract does not specify that the nominated Subcontractor shall indemnify the Agency against and from any negligence or misuse of Goods by the nominated Subcontractor, his agents and employees; or

the subcontract does not specify that, for the subcontracted work (including design, if any).

6.3. PAYMENTS TO NOMINATED SUBCONTRACTORS

The Agency shall pay to the nominated Subcontractor the amounts which the Project Manager certifies to be due in accordance with the subcontract. Project Developer shall not be held responsible for the payment and related issues to be made to Subcontractor/Vendor/Supplier/Or any other agency appointed by the Agency for completing the works under the contract or any specialized assignment within the framework of the contract which is to be completed by the Agency under the purview of the contract. These amounts plus other charges shall be included in the Contract Price in accordance with sub-paragraph (b) of Sub-Clause 13.5 [Provisional Sums], except as stated in Sub-Clause 5.4 [Evidence of Payments].

6.4. EVIDENCE OF PAYMENTS

Before issuing a Payment, Certificate which includes an amount payable to a nominated Subcontractor, the Project Manager may request the Agency to supply reasonable evidence that the nominated Subcontractor has received all amounts due in accordance with previous Payment Certificates, less applicable deductions for retention or otherwise. Unless the Agency:

(a) submits this reasonable evidence to the Project Manager, or

(b) (i) satisfies the Project Manager in writing that the Agency is reasonably entitled to withhold or refuse to pay these amounts, and

(ii) submits to the Project Manager reasonable evidence that the nominated Subcontractor has been notified of the Agency's entitlement,

then the Project Developer may (at his sole discretion) pay, direct to the nominated Subcontractor, part or all of such amounts previously certified (less applicable deductions) as are due to the nominated Subcontractor and for which the Agency has failed to submit the evidence described in sub-paragraphs (a) or (b) above. The Agency shall repay to the Project Developer or authorize the Project Developer to deduct from the amount due or to become due to the Agency, the amount which the nominated Sub-Agency was directly paid by the Project Developer.

7. STAFF AND LABOUR

7.1. ENGAGEMENT OF STAFF AND LABOUR

Except as otherwise stated in the Specification or the Schedules or Annexure to the General Conditions, the Agency shall make arrangements for the engagement of all staff and labour, local or otherwise, and for their payment, housing, feeding and transport and the Project Developer shall not be responsible for the same.

7.2. RATES OF WAGES AND CONDITIONS OF LABOUR

The Agency shall pay rates of wages, and observe conditions of labour, which are not lower than those established for the state and as per the statutory stipulations and applicable Laws and good industry practice.

7.3. PERSONS IN THE SERVICE OF PROJECT Developer

The Agency shall not recruit, or attempt to recruit, staff and labour from amongst the Project Developer's Personnel or any other consultants appointed by Project Developer.

7.4. LABOUR LAWS

The Agency shall comply with all the relevant Labour Laws applicable from time to time to the Agency's Personnel, including Laws relating to their employment, health, safety, welfare, wages, PF, ESI, immigration and emigration or any other law of the land and shall allow them all their legal rights and shall produce enough evidence that the Agency is complying with the same.

The Agency shall require his employees to obey all applicable Laws, including those concerning safety at work.

During continuation of the contract, the Agency and his sub-Agencies shall abide at all times by all existing labour enactments and rules made there under, regulations, laws, order, decree, notifications and byelaws of State/Central Government or local authorities and any other labour law (including rules), regulations, byelaws that may passed or notified under any labour law by the state / central government or the local authorities during execution of the Work as applicable. The Agency shall keep the Project Developer indemnified in case any action is taken against the Project Developer by the competent authority because of contravention of any of the provisions of any act or rules made under these regulations or

notifications including amendments up to the maximum amount of the contract value. In case the Project Developer is caused to pay or reimburse such amounts as may be necessary to cause or observe or for non–observance of the provisions stipulated in the notifications/bye-laws/acts/rules/regulations including amendments, if any, on the part of the Agency, the Project Developer shall also have right to recover from the Agency any sum required or estimated to be required for making good the loss or damage suffered by the Project Developer.

The employees of the Agency and his sub –Agency, whether nominated or otherwise, in no case shall be deemed to be the employees of the Project Developer at any point of time.

Some of the major labour laws applicable to establishments engaged in building & other construction work are as under. The Agency shall note that this list is not exhaustive but indicative and it shall be the Agencies responsibility to appraise himself with all the applicable laws in addition to the list below, their amendments and other changes.

- Workmen Compensation Act 1923 and its subsequent amendments, if any: Applicable in case of injury by accident on work.
- Payment of Wages Act 1936 and its subsequent amendments, if any: Provides for when and on which date payment is to be made as well as what deductions to be made.
- Minimum Wages Act 1948 and its subsequent amendments, if any: Provides compulsion for payment to contract labour not less than Minimum wages fixed by appropriate Government.
- Maternity Benefit Act 1951 and its subsequent amendments, if any: Provides for leave and other benefits to women employees in case of confinement / miscarriage.
- Employees PF and Misc. Provision Act 1952 and its subsequent amendments, if any:
- Contract Labour (Regulation & Abolition) Act 1970 and its subsequent amendments, if any: Provides Labour welfare measures to be provided by the Agency. Also provides for acquisition of Labour license if more than 20 contract labours are employed by the Agency.
- The Water (Prevention & Control of Pollution) Act 1974 and its subsequent amendments, if any: Provides for prevention and control of water pollution and maintaining & restoring of wholesomeness of water.
- Equal Remuneration Act 1979 and its subsequent amendments, if any: Provides for equal wages for work of equal nature to male & female employees.
- The Air (Prevention & Control of Pollution) Act 1981 and its subsequent amendments, if any: Provides for prevention, control and abatement of air pollution.
- Child Labour (Prohibition & Regulation) Act 1986 and its subsequent amendments, if any: The Act prohibits employment of child labour in Building & Construction Industry.
- The Environment Protection Act 1988 and its subsequent amendments, if any: Provides for the protection and improvement of environment and for matters connected therewith and the prevention of hazards to all living beings, plants, & property.
- The building and other Construction Workers Welfare Cess Act 1996 and its subsequent amendments, if any: provides for the levy and collection of a cess on the cost of construction incurred by Owners with a view to increase the resources of the Building and Other Construction Workers' Welfare Boards constituted under the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996.

Notwithstanding with the provisions above Agency shall also comply and perform in accordance with the additional provisions specified under Annexure to the General Conditions.

7.5. WORKING HOURS

No work shall be carried out on the Site on locally recognized days of rest, or outside the normal working hours stated in the Appendix to RFP, unless:

(a) otherwise stated in the Contract,
(b) the Project Manager gives consent, or
(c) the work is unavoidable, or necessary for the protection of life or property or for the safety of the Works, in which case the Agency shall immediately advise the Project Manager

The Project Manager and the Agency shall agree upon the Working hours in each month, depending upon work schedule requirements, exigencies Traffic restrictions/ statutory requirements, etc. and the Agency is obligated to follow the instructions of the Project Manager

7.6. FACILITIES FOR STAFF AND LABOUR

Except as otherwise stated in the Specification or the Schedules, the Agency shall provide and maintain all necessary accommodation and welfare facilities for the Agency's Personnel. The Agency shall also provide facilities for the Project Developer's Personnel as stated in the Specification.

The Agency shall not permit any of the Agency's Personnel to maintain any temporary or permanent living quarters within the structures forming part of the Permanent Works without consent of the Project Manager.

7.7. STORAGE SPACE & SECURITY

The Developer shall provide a space for contractor's materials, tools, etc. subject to availability of space at site. All materials, labour and any other expense required for making the space lockable and secure is contractor's responsibility. However, Developer shall not be responsible for any damage or pilferage or theft. Contractor shall remove or re-shift his materials as and when required or instructed by Project Manager in charge at no extra costs to us MLDL. Contractor will vacate, dismantle, and remove from site all contractor's establishment immediately after completion of work and clean and level the ground properly. Contractor shall arrange his own security.

7.8. HEALTH AND SAFETY

The Agency shall always take all reasonable precautions to maintain the health and safety of the Agency's Personnel. In collaboration with local health authorities, the Agency shall ensure that medical staff, first aid facilities, sick bay and ambulance service are always available at the Site and at any accommodation for Agency's and Project Developer's Personnel, and that suitable arrangements are made for all necessary welfare and hygiene requirements and for the prevention of epidemics.

The Agency 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 execution of the Works, the Agency shall provide whatever is required by this person to exercise this responsibility and authority.

Notwithstanding the provisions above, the Agency shall also comply with the additional health and safety requirements as specified in Annexure to the General Conditions.

7.9. COVID-19 INSURANCE FOR LABOUR & STAFF

Contractor shall obtain Covid-19 insurance for all his labour & staff. The cost of the same shall be deemed to be included in the quoted rates.

7.10. HOUSEKEEPING & CLEANING:

Contractor must follow the EHS and Safety policy of the Developer. Regular cleaning of the site shall be done by the Contractor (for his own work done) and the debris shall be disposed of, at a periodic interval as per the instruction of the Project Manager to maintain good working conditions failing which the Developer reserves the right to get it done from any other agency and debit the expenses incurred against the job to the main Contractor. Debit will be done taking actual labour cost + 15% overheads & incidental cost. Debit note to be duly signed by Contractor & Developer's representative

7.11. AGENCY'S SUPERINTENDENCE

Throughout the execution of the Works, and as long thereafter as is necessary to fulfil the Agency's obligations, the Agency shall provide all necessary superintendence to plan, arrange, direct, manage, inspect and test the work.

Superintendence shall be given by enough persons having adequate knowledge of the language for communications (defined in Sub-Clause 1.4 [Law and Language]) and of the operations to be carried out (including the methods and techniques required, the hazards likely to be encountered and methods of preventing accidents), for the satisfactory and safe execution of the Works.

7.12. AGENCY'S PERSONNEL

The Agency's Personnel shall be appropriately qualified, skilled and experienced in their respective trades or occupations. The Project Manager may require the Agency to remove (or cause to be removed) any person employed on the Site or Works, including the Agency's Representative if applicable, who:

(a) Persists in any misconduct or lack of care,
(b) Carries out duties incompetently or negligently,
(c) Fails to conform with any provisions of the Contract, or
(d) Persists in any conduct which is prejudicial to safety, health, or the protection of the environment.
(e) Or any other reason not acceptable as per the Project Manager

If appropriate, the Agency shall then appoint (or cause to be appointed) a suitable replacement person.

Notwithstanding the provisions above Agency shall also comply with the additional site organization requirements as specified in Annexure to the General Conditions.

7.13. RECORDS OF AGENCY'S PERSONNEL AND EQUIPMENT

The Agency shall submit, to the Project Manager, details showing the number of each class of Agency's Personnel and of each type of Agency's Equipment on the Site. Details shall be submitted each calendar month, in a form approved by the Project Manager, until the Agency has completed all work which is known to be outstanding at the completion date stated in the Taking-Over Certificate for the Works.

7.14. DISORDERLY CONDUCT

The Agency shall always take all reasonable precautions to prevent any unlawful, riotous or disorderly conduct by or amongst the Agency's Personnel, and to preserve peace and protection of persons and property on and near the Site.

7.15. WORKMEN

The Agency shall always enforce strict discipline and good order among his employees and those of any Subcontractor and shall not employ on the Work any unfit person or anyone not skilled and experienced in the assigned task. The Agency's employees employed on the Work, who fail to perform the Work in the manner required by the Project Developer shall be discharged immediately and such persons shall not be re-employed at the Project Developer's site for tasks for which they were found unfit. Such discharge shall not be the basis of any claim for compensation or damages against the Project Developer. Agency shall not employ any person who is under the age of 18 years. The Agency shall keep labour attendance records (head counts) for both male & female workers with age group bifurcations as age less than 30 yrs., between 30 to 50 yrs., and more than 50 years of age. The record of labour attendance (head count) shall be submitted to the Project Developer on a monthly basis. The Agency shall make labour payments on regular basis as per the applicable labour laws and records of all labour payments shall be submitted to the Project Developer as and when required by Project Developer.

1. Minimum labour requirement should be maintained at site by Agency conforming to IS 7272 (part – I) 1974.
2. Detail calculation of labour requirement should be worked out and submitted by the Agency on receiving of Good for Construction drawings before executing the activity for review and approval of the Project Developer.
3. Alternate labour arrangement should be made by the Agency in peak period of labour shortage in all circumstances.
4. No delays in work will be accepted due to unavailability of labour at site.
5. Or any other reason arising out of non-satisfaction of the Project Developer

8. PLANT, MATERIALS AND WORKMANSHIP

8.1. MANNER OF EXECUTION

The Agency shall carry out the manufacture of Plant, the production and manufacture of Materials, and all other execution of the Works:

(a) In the manner (if any) specified in the Contract,
(b) In a proper workmanlike and careful manner, in accordance with recognized good practice, and of desired quality, and
(c) With properly equipped facilities and non-hazardous Materials, except as otherwise specified in the Contract.

8.2. SAMPLES

The Agency shall submit samples of Materials, and relevant information for the Project Manager's consent as and when required, prior to using the Materials in or for the Works. The samples must be submitted in advance giving 30 days' time for the Project Manager's review prior to quantity fabrication or, in the case of manufactured items, prior to placing purchase orders.

Samples of Materials shall be submitted with descriptive labels and/or application or installation instructions intact and legible and properly labelled/tagged to identify the material type, reference, manufacturer/supplier and country of origin.

Where variations in texture, colour, grain or other characteristics are inherent and anticipated in the samples submitted, enough quantity shall be provided to indicate the full range of characteristics which will be present.

The Agency shall accompany each transmittal of samples with a transmittal listing the sample data for each sample and referencing each sample to the appropriate Drawing or Specification section and clause.

The Agency shall execute samples of workmanship for the Project Developer as and when required.

The Agency must obtain the Project Developer's prior written approval in writing of the respective samples of Workmanship and prototypes before proceeding with the execution of the various sections of the Works.

Acceptance of any sample shall be only for characteristics or for uses named in such acceptance and for other any other purpose as indicated by the Project Manager. Acceptance or rejection of a sample shall not be taken as a Variation. Once a Material has been accepted, no further change in brand or make will be permitted.

The Agency shall execute samples of workmanship and prototypes for the Project Manager as and when required. The Agency shall obtain the Project Manager's approval of the respective samples of workmanship and prototypes before proceeding with the actual mass execution of the various sections of the Works.

The finished work shall correspond to the approved samples of materials, workmanship and prototypes. The Project Manager at his sole discretion may return certain samples for use in the Works. These shall be installed in good condition and suitably marked for identification. Such samples and any packing are to be provided at the expense of the Agency for the use of the Project Manager and are to be displayed in a sample room.

In the event of non-compliance with samples of materials, workmanship and prototypes by the Agency, the Project Manager may reject the Work under Sub-Clause 7.5 [Rejection] and

the Agency shall have to rectify such defective Work in accordance with the provisions of Sub-Clause 7.6 [Remedial Work].

8.3. INSPECTION

The Project Developer's Personnel shall at all reasonable times:

(a) have full access to all parts of the Site and to all places from which natural Materials are being obtained, and

(b) during production, manufacture and construction (at the Site and elsewhere), be entitled to examine, inspect, measure and test the materials and workmanship, and to check the progress of manufacture of Plant and production and manufacture of Materials.

The Agency shall give the Project Developer's Personnel full opportunity to carry out these activities, including providing access, facilities, permissions and safety equipment. No such activity shall relieve the Agency from any obligation or responsibility.

The Agency shall give notice to the Project Manager whenever any work is ready and before it is covered up, put out of sight, or packaged for storage or transport. The Project Manager shall then either carry out the examination, inspection, measurement or testing without unreasonable delay, or promptly give notice to the Agency that the Project Manager does not require to do so. If the Agency fails to give the notice, he shall, when required by the Project Manager, uncover the work and thereafter reinstate and make good, all at the Agency's cost.

8.4. TESTING

The Sub-Clause shall apply to all test specified or required to confirm the performance of the design, materials and workmanship proposed by the Agencies, other than Tests after completion.

The Agency shall provide all apparatus, assistance, documents and other information, electricity, equipment, fuel, consumables, instruments, labour, materials, and suitably qualified and experienced staff, as are necessary to carry out the specified tests efficiently.

The Agency shall have well equipped laboratory at site with brand new equipment for testing of materials and samples as stated in list of laboratory equipment's annexed to the contract document. The Agency shall agree, with the Project Manager, the time and place for the specified testing of any Plant, Materials and other parts of the Works.

The Project Manager may, under Clause 13 [Variations and Adjustments], vary the location or details of specified tests, or instruct the Agency to carry out additional tests. If these varied or additional tests show that the tested Plant, Materials or workmanship is not in accordance with the Contract, the cost of carrying out this Variation shall be borne and paid by the Agency, notwithstanding other provisions of the Contract.

The Project Manager shall give the Agency not less than 24 hours' notice for offsite test and 4 hours' notice for all routine onsite tests of the Project Manager's intention to attend the tests. If the Project Manager does not attend at the time and place agreed, the Agency any

proceed with the tests, unless otherwise instructed by the Project Manager, and the tests shall then be deemed to have been made in the Project Manager's presence.

If the Agency suffers delay and / or incurs Cost from complying with these instructions or because of a delay for which the Project Developer is responsible, the Agency shall give notice to the Project Manager and shall be entitled subject to Sub-Clause 20.1 [Agency's Claims] to:

(a) An extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [Extension of Time for Completion], and
(b) Payment of any such Cost, which shall be included in the Contract Price.

After receiving this notice, the Project Manager shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine these matters.

The Agency shall promptly forward to the Project Manager duly certified reports of the tests. When the specified tests have been passed, the Project Manager shall endorse the Agency's test certificate, or issue a certificate to him, to that effect. If the Project Manager has not attended the tests, he shall be deemed to have accepted the readings as accurate.

Third party Quality Testing for whole works will be done according to IS Specifications and Agency/ Laboratory will be approved by MWCJ and cost of testing will be borne by Agency. Detailed test reports for carry out shall be submitted as per requirement of MWCJ.

8.5. REJECTION

If, because of an examination, inspection, measurement or testing, any Plant, Materials or workmanship is found to be defective or otherwise not in accordance with the Contract, the Project Manager may reject the Plant, Materials or workmanship by giving notice to the Agency, with reasons. The Agency shall then promptly make good the defect or replace such Plant, Materials and/or Workmanship and ensure that the rejected item complies with the Contract.

If the Project Manager requires this Plant, Materials or workmanship to be retested, the tests shall be repeated under the same terms and conditions. If the rejection and retesting cause the Project Developer to incur additional costs, the Agency shall subject to Sub-Clause 2.5 [Project Developer's Claims] pay these costs to the Project Developer.

8.6. REMEDIAL WORK

Notwithstanding any previous test or certification, the Project Manager may instruct the Agency to:

(a) Remove from the Site and replace any Plant, Materials and/or Workmanship which is not in accordance with the Contract,
(b) Remove and re-execute any other work which is not in accordance with the Contract, and
(c) Execute any work which is urgently required for the safety of the Works, whether because of an accident, unforeseeable event or otherwise.

The Agency shall comply with the instruction within a reasonable time, which shall be the time (if any) specified in the instruction, or immediately if urgency is specified under sub-paragraph (c).

If the Agency fails to comply with the instruction, the Project Developer shall be entitled to employ and pay other persons to carry out the work. Except to the extent that the Agency would have been entitled to payment for the work, the Agency shall subject to Sub-Clause 2.5 [Project Developer's Claims] pay to the Project Developer all costs arising from this failure.

The Project Manager may but shall not be bound to accept any defective Plant, Materials or un-remedied work, in which event the Contract Price shall be reduced to reflect the loss of value of the Works to the Project Developer or any savings in cost to the Agency in not having to rectify the defective Plant, Materials or work whichever is greater. The Project Manager shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine such adjustment.

8.7. OWNERSHIP OF PLANT AND MATERIALS

Each item of Plant and Materials shall, to the extent consistent with the Laws of the Country, become the property of the Project Developer at whichever is the earlier of the following times, free from lines and other encumbrances:

(a) When it is delivered to the Site.
(b) When the Agency is entitled to payment of the value of the Plant and Materials under Sub-Clause 8.10 [Payment for Plant and Materials in Event of Suspension].

8.8. ROYALTIES

Unless otherwise stated in the Specification, the Agency shall pay all royalties, rents and other payments and submit necessary proofs prior to commencement of Works for:

(a) Natural Materials obtained from outside the Site, and
(b) The disposal of material from demolitions and excavations and of other surplus material (whether natural or man-made), except to the extent that disposal areas within the Site are specified in the Contract.

8.9. ROYALTIES, PATENTS, IP RIGHTS

"Notwithstanding anything contrary contained in this Contract, Developer shall retain title and Developer-ship of all intellectual property rights relating (whether directly or indirectly) arising out of or pertaining to Said Works or the transaction / Project contemplated herein, including but not limited to software, firmware, drawings, technical documentation or other technical information under this Contract.

9. COMMENCEMENT, DELAYS AND SUSPENSION

9.1. COMMENCEMENT OF WORKS

The Commencement Date shall be communicated to the Agency by the Project Manager and in the absence of any communication; the Commencement Date shall be 10 (Ten) days from the date of receiving the Letter of Acceptance/Intent.

The Agency shall commence the execution of the Works from Commencement Date after due compliance of all its prerequisite obligations as stated below and shall then proceed with the Works with due expedition and without delay.

Prerequisite Obligations to Commencement of Works:

- Submission of Performance Guarantee in accordance with Sub-Clause 4.2,
- Submission Insurances in accordance with Clause 18,
- Approval of Project Quality Plan in accordance with Sub-Clause 4.9 and Annexure to the General Conditions,
- Approval of Project Safety Plan Sub-Clause 4.8 and Annexure to the General Conditions,
- Obtaining Labour License from the concerned authorities,
- Approval of Construction Program in accordance with Sub-Clause 8.3.

9.2. TIME FOR COMPLETION

The Agency shall complete the whole of the Works, and each Section (if any), within the Time for Completion for the Works or Section (as the case may be), as stated in Appendix to RFP including:

(a) Achieving the passing of the Tests on Completion, and

(b) Completing all works which is stated in the Contract as being required for the Works or Section to be completed for the purposes of taking-over under Sub-Clause 10.1 [Taking Over of the Works and Sections.]

9.3. PROGRAMME

The Agency shall submit a detailed time program to the Project Manager within 07 (seven) days after receiving the notice under Sub-Clause 8.1 [Commencement of Works]. The Agency shall also submit a revised programme whenever the previous programme is inconsistent with actual progress or with the Agency's obligations. Each programme shall include:

(a) Micro construction schedule in MS Project/Primavera/MS Excel identifying all major/minor milestones and activities in the order in which the Agency intends to carry out the Works, including the anticipated timing of each stage of design (if any), Agency's Documents, procurement, manufacture of Plant, delivery to Site, construction, erection and testing,

(b) Each of these stages for work by each nominated Subcontractor (as defined in Clause 5 [Nominated Sub-Agencies])

(c) The sequence and timing of inspections and tests specified in the Contract, and

(d) A supporting report which includes:

(i) A general description of the methods which the Agency intends to adopt, and of the major stages, in the execution of the Works, and

(ii) Details showing the Agency's reasonable estimate of the number of each class of Agency's Personnel and of each type of Agency's Equipment, required on the Site for each major stage.

The Agency shall submit his detailed Program of Work in the form of a schedule to the Project Manager for approval, indicating the date that each part or element of the Work will be started and completed including, where applicable, the continuance of operations and indicating a schedule of the required submittals including shop drawings, samples, list of materials and equipment, equipment data and instruction manuals. The program and schedule shall conform to the Work and the Time for Completion and shall be subject to such revisions the Project Manager may require for his approval.

The Agency shall update and revise the above schedule every month. Each updated and revised schedule shall be submitted to the Project Manager for approval simultaneously with the Agency's application for progress payment for the same time and shall be subject to such revisions the Project Manager may require for his approval. Additional requirements from the Project Developer in this regard are enlisted in the Annexure to General Conditions.

The Project Manager's approval of revised progress schedules may be a condition precedent to the approval of the Agency's applications for progress payments.

Unless the Project Manager, within 07 (Seven) days after receiving a programme, gives notice to the Agency stating the extent to which it does not comply with the Contract, the Agency shall proceed in accordance with the programme, subject to his other obligations under the Contract. The Project Developer's Personnel shall be entitled to rely upon the programme when planning their activities.

The Agency shall promptly give notice to the Project Manager of specific probable future events or circumstances which may adversely affect the work, increase the Contract Price or delay the execution of the Works. The Project Manager may require the Agency to submit an estimate of the anticipated effect of the future event or circumstances, and / or a proposal under Sub-Clause 13.3 [Variation Procedure].

If, at any time, the Project Manager gives notice to the Agency that a programme fails (to the extent stated) to comply with the Contract or to be consistent with actual progress and the Agency's stated intentions, the Agency shall submit a revised programme to the Project Manager in accordance with this Sub-Clause.

9.4. EXTENSION OF TIME FOR COMPLETION

The Agency shall be entitled subject to Sub-Clause 20.1 [Agency's Claims] to an extension of the Time for Completion if and to the extent that completion for the purposes of Sub-Clause 10.1 [Taking Over of the Works and Sections] is or will be delayed by any of the following causes:

(a) A Variation (unless an adjustment to the Time for Completion has been agreed under Sub-Clause 13.3 [Variation Procedural],

(b) A cause of delay giving an entitlement to extension of time under a Sub-clause of these Conditions,

(c) Exceptionally adverse climatic conditions,

(d) Unforeseeable shortages in the availability of personnel or Goods caused by epidemic or governmental actions, or
(e) Any delay, impediment or prevention caused by or attributable to the Project Developer, the Project Developer's Personnel, or the Project Developer's other Agencies on the Site.
(f) Any changes in quantities, in the Bills of Quantities, due to errors in the measurement shall not be a cause for any extension of time.

If the Agency considers himself to be entitled to an extension of the Time for Completion, the Agency shall immediately give notice to the Project Manager in accordance with Sub-Clause 20.1 [Agency's Claims]. When determining each extension of time under Sub-Clause 20.1, the Project Manager shall review previous determinations and may without being obliged to increase, but shall not decrease, the total extension of time.

Nothing contained in this clause or in Clause 8.5 (Delays caused by authorities) shall be construed as giving a right to the Agency for receiving increased Costs unless such entitlement to increased Costs are specifically provided for elsewhere in the Contract.

The decision of the Project Manager for application of the above conditions shall be final and binding to the Agency.

9.5. DELAYS CAUSED BY AUTHORITIES

If the following conditions apply, namely:
(a) the Agency has diligently followed the procedures laid down by the relevant legally constituted public authorities in the Country,
(b) these authorities delay or disrupt the Agency's work, and
(c) the delay or disruption was Unforeseeable,

Then this delay or disruption will be considered as a cause of delay under sub paragraph (b) of Sub-clause 8.4 [Extension of Time for Completion].

The decision of the Project Manager for application of the above conditions shall be final and binding to the Agency.

9.6. RATE OF PROGRESS

If, at any time:
(a) Actual progress is too slow to complete within the Time for Completion, and / or
(b) Progress has fallen (or will fall) behind the current programme under Sub-Clause 8.3 [Programme],

Other than because of a cause listed in Sub-Clause 8.4 [Extension of Time for Completion], then the Project Manager may instruct the Agency to submit, under Sub-Clause 8.3 [Programme], a revised programme and supporting report describing the revised methods which the Agency proposes to adopt to expedite progress and complete the Works within the Time for completion.

Unless the Project Manager notifies otherwise, the Agency shall adopt these revised methods, which may require increases in the working hours and / or Goods, at the risk and cost of the Agency. If these revised methods cause the Project Developer to incur additional costs, the Agency shall subject to Sub-Clause 2.5 [Project Developer's Claims] pay these costs to the Project Developer, in addition to delay damages (if any) under Sub-Clause 8.7 below. This is without prejudice to right of the Project Developer to deduct and recover such amount from progress payment due to the Agency.

9.7. DELAY DAMAGES

Damages for the delay in completion of the work due to reasons attributable to Agency after taking into consideration approved extension of time, an amount equivalent to 0.5% of the contract price will be deducted from amount payable for every week's delay not exceeding 5% of contract price.

At the discretion of Project Manager such delay damages may be applicable for intermediate milestones as stated in the construction programme. In the event the Agency has achieved next milestone, the damages imposed or levied on the earlier milestone(s) shall be reversed & paid back to the Agency in subsequent Application for Payment.

9.8. SUSPENSION OF WORK

The Project Manager may at any time instruct the Agency to suspend progress of part or all the Works. During such suspension, the Agency shall protect, store and secure such part or the Works against any deterioration, loss or damage. If due to suspension arising from the fault of Agency, if any pecuniary loss has been occurred, the sole and exclusive liability shall be of the Agency and not the Project Manager/Project Developer.

The Project Manager may also notify the cause for the suspension. If and to the extent that the cause is notified and is the responsibility of the Agency, the following Sub-Clauses 9.9, 9.10 and 9.11 shall not apply.

9.9. CONSEQUENCES OF SUSPENSION

If the Agency suffers delay and/or incurs Cost from complying with the Project Manager's instructions under Sub-Clause 9.8 [Suspension of Work] and / or from resuming the work, the Agency shall give notice to the Project Manager and shall be entitled subject to Sub-Clause 20.1 [Agency's Claims] to:

(a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [Extension of Time for Completion], and

After receiving this notice, the Project Manager shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine these matters.

The Agency shall not be entitled to an extension of time for, or to payment of the Cost incurred in, making good the consequences of the Agency's design, workmanship or materials, or of the Agency's failure to protect, store or secure in accordance with Sub-clause 9.8 [Suspension of Work].

The Agency shall not be entitled to any revision in item rates in Bill of Quantities post resumption of Works if the suspension is due to obtaining approvals, consents, permissions

or orders from authorities, even if obtaining such approvals, consents, permissions or orders is the responsibility of the Project Developer or Project Manager.

9.10. PAYMENT FOR PLANT AND MATERIALS IN EVENT OF SUSPENSION

The compensation to the Agency for the period of suspension exceeding continuous 60 (sixty) days as mentioned in the Sub-Clause 8.9(b) above, shall be decided by the Project Developer and shall be included in the Contract Price. The decision of the Project Developer in this regard shall be final and conclusive against the Agency.

9.11. PROLONGED SUSPENSION

If the suspension under Sub-Clause 8.8 [Suspension of Work] has continued for more than 90 (Ninety) days, the Agency may request the Project Manager's permission to proceed. If the Project Manager does not give permission within 28 days after being requested to do so, the Agency may, by giving notice to the Project Manager, treat the suspension as an omission under Clause 13 [Variations and Adjustments] of the affected part of the Works. If the suspension affects the whole of the Works, the Agency may give notice of termination under Sub-Clause 16.2 [Termination by Agency].

9.12. RESUMPTION OF WORK

After the permission or instruction to proceed is given, the Agency and the Project Manager shall jointly examine the Works and the Plant and Materials affected by the suspension. The Agency shall make good any deterioration or defect in or loss of the Works or Plant or Materials, which has occurred during the suspension.

10. TESTS ON COMPLETION AND PRE-COMPLETION INSPECTION

10.1. AGENCY'S OBLIGATION

The Agency shall carry out the Tests on Completion in accordance with this Clause and Sub-Clause 7.4 [Testing], after providing the documents in accordance with sub-paragraph (d) of Sub-Clause 4.1 [Agency's General Obligations].

The Agency shall give to the Project Manager not less than 21 days' notice of the date after which the Agency will be ready to carry out each of the Tests on Completion. Unless otherwise agreed, Tests on Completion shall be carried out within 14 days after this date, on such day or days as the Project Manager shall instruct.

In considering the results of the Tests on Completion, the Project Manager shall make allowances for the effect of any use of the Works by the Project Developer on the performance or other characteristics of the Works. As soon as the Works, or a Section, have passed any Tests on completion, the Agency shall submit a certified report of the results of these Tests to the Project Manager.

10.2. DELAYED TESTS

If the Tests on Completion are being unduly delayed by the Project Developer, Sub-Clause 7.4 [Testing] (fifth paragraph) and / or Sub-clause 10.3 [Interference with Tests on Completion] shall be applicable.

If the Tests on Completion are being unduly delayed by the Agency, the Project Manager may by notice require the Agency to carry out the Tests within 21 days after receiving the notice. The Agency shall carry out the Tests on such day or days within that period as the Agency may fix and of which he shall give notice to the Project Manager.

If the Agency fails to carry out the Tests on Completion within the period of 21 days, the Project Developer's Personnel may proceed with the Tests at the risk and cost of the Agency. The Tests on Completion shall then be deemed to have been carried out in the presence of the Agency and the results of the Tests shall be accepted by the Agency as accurate.

10.3. RE-TESTING

If the Works, or a Section, fail to pass the Tests on Completion, Sub-Clause 7.5 [Rejection] shall apply, and the Project Manager or the Agency may require the failed Tests, and Tests on Completion on any related work, to be repeated under the same terms and conditions.

10.4. FAILURE TO PASS TESTS ON COMPLETION

If the Works, or a Section, fail to pass the Tests on Completion repeated under Sub-Clause 9.3 [Re-testing], the Project Manager shall be entitled to:

(a) order further repetition of Tests on Completion under sub-Clause 9.3.

(b) if the failure deprives the Project Developer of substantially the whole benefit of the Works or Section, reject the Works or Section (in which event the Project Developer shall have the same remedies as are provided in sub-paragraph (c) of sub-clause 11.4 [Failure to remedy Defects]; or

(c) issue a Taking-Over Certificate if the Project Developer so requests.

In the event of sub-paragraph (c); the Agency shall proceed in accordance with all other obligations under the contract, and the Contract Price shall be reduced by such amount as shall be appropriate to cover the reduced value to the Project Developer because of this failure. Unless the relevant reduction for this failure is stated (or its method of calculation is defined) in the Contract, the Project Developer may require the reduction to be (i) agreed by both Parties (in full satisfaction of this failure only) and paid before this Taking-Over Certificate is issued, or (ii) determined and paid under Sub-Clause 2.5 [Project Developer's Claims] and Cub-clause 3.5 [Determinations].

10.5. PRE-COMPLETION INSPECTION

Prior to any application for the Taking-Over Certificate, the Agency shall issue a written request to the Project Developer to carry out a joint inspection of the Works with the Agency. The written request along with necessary supporting documents stating the completion of Works shall be issued at least seven (7) days prior to the commencement of the said joint inspection.

If during the course of the said joint inspection, the Project Developer is of the opinion that there is any item of Works or Section, which does not comply with the Contract in any respect and that the same should be made good, remedied or reconstructed before the application of the Taking-Over Certificate, then the Project Manager shall instruct in writing

to the Agency to make good, remedy or reconstruct the same to the satisfaction of the Project Manager and the Agency's full compliance therewith shall immediately operate as a condition precedent to the application of the Taking-Over Certificate unless the Project Manager expressly agrees to accept (but shall not be bound to) any of the items of Works or Section, specified in the said instructions without their being made good, remedied or reconstructed by the Agency in such event the Contract Price shall be reduced by any loss of value or otherwise suffered by the Project Developer, or by any saving in cost to the Agency in carrying out the same, whichever is greater.

For the avoidance of doubt, nothing contained in this sub-clause shall be construed as limiting the other powers of the Project Manager under the Contract or as prejudicing the other rights or remedies of the Project Developer under the Contract.

11. PROJECT DEVELOPER'S TAKING OVER

11.1. TAKING OVER OF THE WORKS AND SECTIONS

Except as stated in Sub-Clause 9.4 [Failure to Pass Tests on Completion], the Works shall be taken over by the Project Developer when (i) the Works have been completed in all respects including the completion of all the snag list/items identified after Agency calls for inspection of complete project in accordance with the Contract, including the matters described in Sub-Clause 8.2 [Time for Completion] and except as allowed in sub-paragraph (a) below, and (ii) a Taking-Over Certificate/Completion Certificate for the Works has been issued, or is deemed to have been issued in accordance with this Sub-Clause.

The Agency may apply by notice to the Project Manager for a Taking-Over Certificate not earlier than 14 days before the Works will, in the Agency's and Project Manager's opinion, be complete and ready for taking over. If the Works are divided into Sections, the Agency may similarly apply for a Taking-Over Certificate for each Section.

The Project Manager shall, within 15 days after receiving the Agency's application:

(a) Issue the Taking-Over Certificate to the Agency, stating the date which the Works or Section were completed in accordance with the Contract; or

(b) Reject the application, giving reasons and specifying the work required to be done by the Agency to enable the taking-Over Certificate to be issued. The Agency shall then complete this work before issuing a further notice under this Sub-Clause.

If the Project Manager fails either to issue the Taking-Over Certificate or to reject the Agency's application within the period of 28 days, and if the Works or Section (as the case may be) are substantially in accordance with the Contract the Agency shall issue a communication to the Project Manager with a copy to the Project Developer stating that the issuance of Taking Over Certificate is pending and if the Project Manager fails to respond within 15 days of receipt of such communication, the Project Developer shall intervene with appropriate measures after verifying the factual position, the Taking-Over Certificate shall be deemed to have been issued on the last day of that period.

Issue of Taking Over Certificate shall not be construed as certifying that there are no Defects concerning the Works nor shall it absolve the Agency from liability if any defects concerning the Works are subsequently notified during defects Liability period.

Provided that, without prejudice to the Project Manager's power under Sub-Clause 10.2, if any outstanding works are, in the opinion of the Project Manager, minor works such that:

(a) they can be completed following the removal of the Agency's site organisation and major plant or equipment works; and
(b) there would not be unreasonable disturbance of the Project Developer's full enjoyment and occupation of the property,

then upon the Agency's undertaking in writing in favour of the Project Developer to complete such minor outstanding work within such time or times as may be stipulated by the Project Manager, the Project Manager shall only after a due consultation with Project Developer can issue a Taking-Over Certificate.

The Taking-Over Certificate when issued shall record the said minor outstanding work by way of a schedule attached to the certificate together:

(a) with the terms of any agreement with the Agency for the completion or performance of the said minor outstanding work, and

(b) with the terms of any agreement as to the withholding and subsequent release of any monies that may otherwise have been payable or will be paid under the terms of the Contract.

11.2. TAKING OVER OF PARTS OF THE WORKS

The Project Manager may, at the sole discretion of the Project Developer, issue a Taking-Over Certificate for any part of the Permanent Works.

The Project Developer shall not use any part of the Works (other than as a temporary measure which is either specified in the Contract or agreed by both Parties) unless and until the Project Manager has issued a Taking-Over Certificate for this part. However, if the Project Developer does use any part of the Works before the Taking-Over Certificate is issued:

(a) The Part which is used shall be deemed to have been taken over as from the date on which it is used,
(b) The Agency shall cease to be liable for the care of such part as from this date, when responsibility shall pass to the Project Developer, and
(c) If requested by the Agency, the Project Manager shall issue a Taking-Over certificate for this part.

After the Project Manager has issued a Taking-Over Certificate for a part of the Works, the Agency shall be given the earliest opportunity to take such steps as may be necessary to carry out any outstanding Tests on Completion. The Agency shall carry out these Tests

on Completion as soon as practicable before the expiry date of the relevant Defects Liability Period.

If the Agency incurs cost as a result of the Project Developer taking over and/or using a part of the Works, other than such use as is specified in the contract or agreed by the Agency, the Agency shall (i) give notice to the Project Manager and (ii) be entitled subject to Sub-Clause 20.1 [Agency's Claims] to payment of any such Cost, which shall be included in the Contract Price. After receiving this notice, the Project Manager shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine this Cost.

11.3. INTERFERENCE WITH TESTS ON COMPLETION

If the Agency is prevented, for more than 14 days, from carrying out the Tests on Completion by a cause for which the Project Developer shall be deemed to have taken over the works or Section (as the case may be) on the date when the Tests on Completion would otherwise have been completed.

The Project Manager shall then issue a Taking-Over Certificate accordingly, and the Agency shall carry out the Tests on Completion as soon as practicable, before the expiry date of the Defects Liability Period. The Project Manager shall require the Tests on Completion to be carried out by giving 14 days' notice and in accordance with the relevant provisions of the Contract.

If the Agency suffers delay and / or incurs Cost because of this delay in carrying out the Tests on Completion, the Agency shall give notice to the Project Manager and shall be entitled subject to sub-Clause 20.1 [Agency's Claims] to:

(a) An extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [Extension of Time for Completion], and

(b) Payment of any such Cost, which shall be included in the Contract Price shall be borne by the Agency.

After receiving this notice, the Project Manager shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine these matters.

11.4. SURFACES REQUIRING REINSTATEMENT

Except as otherwise stated in a taking-over Certificate, a certificate for a Section or part of the Works shall not be deemed to certify completion of any ground or other surfaces requiring reinstatement.

12. DEFECTS LIABILITY

12.1. COMPLETION OF OUTSTANDING WORK AND REMEDYING DEFECTS

In order that the Works and Agency's Documents, and each Section, shall be in the condition required by the Contract (fair wear and tear excepted) by the expiry date of the relevant Defects Liability Period for a period of 24 months from the date of handing over.

(a) complete any work which is outstanding on the date stated in a Taking-Over Certificate, as set out in the Schedule to the Taking-Over Certificate, and

(b) execute all work required to remedy defects or damage, as may be notified by (or on behalf of) the Project Developer on or before the expiry date of the Defects Liability Period for the Works or Section (as the case may be).

If a defect appears or damage occurs, the Agency shall be notified accordingly, by (or on behalf of) the Project Developer. The Defects Liability period shall not be applicable on parts of work. The Defects Liability period shall start once works are fully completed/functional and handed over satisfactorily to the Project Developer.

12.2. COST OF REMEDYING DEFECTS

All work referred to in sub-paragraph (b) of Sub-Clause 11.1 [Completion of Outstanding work and Remedying Defects] shall be executed at the risk and cost of the Agency, if and to the extent that the work is attributable to:

(a) any design for which the Agency is responsible,
(b) Plant, Materials or workmanship not being in accordance with the Contract, or
(c) Failure by the Agency to comply with any other obligation.
(d) any other reason attributable to the Agency.

12.3. EXTENSION OF DEFECTS LIABILITY PERIOD

The Project Developer shall be entitled subject to Sub-Clause 2.5 [Project Developer's Claims] to an extension of the Defects Liability Period for the Works or a Section if and to the extent that the Works, Section or a major item of Plant (as the case may be, and after taking over) cannot be used for the purposes for which they are intended by reason of a defect or damage. However, the Defects Liability Period shall not be extended by more than two years.

If delivery and / or erection of Plant and / or Materials was suspended under Sub-Clause 8.8 [Suspension of Work] or Sub-clause 16.1 [Agency's Entitlement to suspend Work], the Agency's obligations under this Clause shall not apply to any defects or damage occurring more than two years after the Defects Liability Period for the Plant and / or Materials would otherwise have expired.

12.4. FAILURE TO REMEDY DEFECTS

If the Agency fails to remedy any defect or damage within a reasonable time, a date may be fixed by (or on behalf of) the Project Developer, on or by which the defect or damages to be remedied. The Agency shall be given reasonable notice of this date.

If the Agency fails to remedy the defect or damage by this notified date and this remedial work was to be executed at the cost of the Agency under Sub-clause 11.2 [Cost of Remedying Defects], the Project Developer may (at his option):

(a) Carry out the work himself or by others, in a reasonable manner and at the Agency's cost, but the Agency shall have no responsibility for this work; and the Agency shall subject to Sub-Clause 2.5 [Project Developer's Claims] pay to the Project Developer the costs incurred at actual by the Project Developer in remedying the defect or damage without prejudice to the Project Developer's right to claim damages as provided in this Contract or under the Law.

(b) Require the Project Manager to agree or determine a reasonable reduction in the Contract Price in accordance with Sub-Clause 3.5 [Determinations] Reasonable reduction shall mean either any saving in cost obtained by the Agency by failing to remedy the defect or damage or the reduced value of the works to the Project Developer or the cost of rectifying, reconstruction or replacement of the Works by methods stipulated or approved by the Project Manager, whichever is the greatest; or

(c) If the defect or damage deprives the Project Developer of substantially the whole benefit of the Works or any major part of the Works, terminate the contract, or in respect of such major part which cannot be put to the intended use. Without prejudice to any other rights, under the contract or otherwise, the Project Developer shall then be entitled to recover all sums paid for the Works or for such part (as the case may be), plus financing costs and the cost of dismantling the same, clearing the site and returning Plant and Materials to the Agency.

12.5. REMOVAL OF DEFECTIVE WORK

If the defect or damage cannot be remedied expeditiously on the Site and the Project Developer gives consent, the Agency may remove from the Site for the purposes of repair such items of Plant as are defective or damaged. This consent may require the Agency to increase the amount of the Performance Security by the full replacement cost of these items, or to provide other appropriate security as approved by Project Developer.

12.6. FURTHER TESTS

If the work of remedying of any defect or damage may affect the performance of the Works. The Project Manager may require the repetition of any of the tests described in the Contract. The requirement shall be made by notice within 28 days after the defect or damage is remedied.

These tests shall be carried out in accordance with the terms applicable to the previous tests, except that they shall be carried out at the risk and cost of the Agency, under sub-clause 11.2 [Cost of Remedying Defects], for the cost of the remedial work.

12.7. RIGHT OF ACCESS

Until the Work Completion Certificate has been issued, the Agency shall have such right of access to the Works as is reasonably required to comply with this Clause, except as may be inconsistent with the Project Developer's reasonable security restrictions.

12.8. AGENCY TO SEARCH

The Agency shall, if required by the Project Manager, search for the cause of any defect, under the direction of the Project Manager and shall rectify the same in accordance with the directions of the Project Manager.

12.9. WORK COMPLETION CERTIFICATE

Performance of the Agency's obligations shall not be considered to have been completed until the Project Manager has issued the Work Completion Certificate to the Agency, stating the date on which the Agency completed his obligations under the Contract.

The Project Manager shall issue the Work Completion Certificate after completion of the work followed by commencement of Defect Liability Period, or as soon thereafter as the Agency has supplied all the Agency's Documents and completed and tested all the Works, including remedying any defects. A copy of the Work Completion Certificate shall be issued to the Project Developer.

Only the Work Completion Certificate shall be deemed to constitute acceptance of the Works.

12.10. UNFULFILLED OBLIGATIONS

After the Work Completion certificate has been issued, each Party shall remain liable for the fulfilment of any obligation which remains unperformed at that time. For the purposes of determining the nature and extent of unperformed obligations, the Contract shall be deemed to remain in force.

12.11. CLEARANCE OF SITE

Upon receiving the Taking-Over Certificate, the Agency shall remove any remaining Agency's Equipment, surplus material, wreckage, rubbish and Temporary Works from the Site at his cost.

If all these items have not been removed within 28 days after the Project Developer receives a copy of the Taking-Over Certificate, the Project Developer may sell or otherwise dispose of any remaining items. The Project Developer shall be entitled to be paid the costs incurred in connection with, or attributable to, such sale or disposal and restoring the Site.

Any balance of the moneys from the sale shall be paid to the Agency. If these moneys are less than the Project Developer's costs, the Agency shall pay the outstanding balance to the Project Developer.

12.12. TEMPORARY REINSTATEMENT

If in connection with the execution of the Works, any highway or other road or way is damaged or otherwise affected and if the permanent reinstatement of such highway or other road or way is to be carried out by persons other than the Agency, the Agency shall:

(a) at his own cost and independently of any requirement of or notice from the Project Manager make good any defects and maintain the temporary reinstatement so made good until:

(i) the end of the Defects Liability Period; or

(ii) the taking of possession of the Site by the relevant authorities or any other person for the purposes of carrying out permanent reinstatement works; whichever is earlier; and

Until such time as stated in (i) or (ii) above, keep the Project Developer indemnified against any loss arising from any damage, loss or expense arising from or in connection with the temporary reinstatement or the Agency's failure to carry out the temporary reinstatement works.

Where the relevant authorities or any person take possession of the Site as aforesaid in sections or lengths, the responsibility of the Agency shall cease with respect to such sections or lengths and the indemnity / indemnities given by the Agency shall be construed and have effect accordingly.

13. MEASUREMENT AND EVALUATION

13.1. WORKS TO BE MEASURED

In the opinion of the Project Manager or his delegated assistants and if they feel that any part of the Works require measurement for the purpose of.

(a) Evaluation of a Variation in accordance with Sub-Clause 13.3 [Variation Procedure]; or
(b) Computation of the Contract Price of the item(s) of works of which value is included in the Accepted Contract Amount based on approximate quantities; or
(c) Any other provision of the Contract requires measurement for its implementation,

A reasonable notice shall be given to the Agency's Representative, who shall:

(a) Promptly either attend or send another qualified representative to assist the Project Manager in making the measurement at site and/or from the drawings issued to the Agency for Works, and
(b) Supply any particulars requested by the Project Manager.

If the Agency fails to attend or send a representative, the measurement made by (or on behalf of) the Project Manager shall be accepted as accurate.

Except as otherwise stated in the Contract, wherever any Permanent Works are to be measured from records, these shall be prepared by the Project Manager. The Agency shall, as and when requested, attend to examine and agree the records with the Project Manager, and shall sign the same when agreed. If the Agency does not attend, the records shall be accepted as accurate.

If the Agency examines and disagrees the records, and / or does not sign them as agreed, then the Agency shall give notice to the Project Manager of the respects in which the records are asserted to be inaccurate. After receiving this notice, the Project Manager shall review the records and either confirm or vary them. If the Agency does not so give notice to the Project Manager within 14 days after being requested to examine the records, they shall be accepted as accurate.

13.2. METHOD OF MEASUREMENT

Except as otherwise stated in the Contract and notwithstanding local practice:

(a) measurement shall be made of the net actual quantity of each item of the Permanent Works, and
(b) In addition to other measurement methods elaborated under the specification, the method of measurement shall be in accordance with SP-27: 1987 "Handbook of Method of Measurement of Building Works" and IS: 1200 published by the Bureau of Indian Standards.

13.3. EVALUATION

Except as otherwise stated in the Contract, the Project Manager shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine the Contract Price by evaluating each item of work, applying the measurement agreed or determined in accordance with the above Sub-Clauses 12.1 and 12.2 and the appropriate rate or a price for the item.

For each item of work, the appropriate rate or price for the item shall be the rate or price specified for such item in the Contract or, if there is no such item, specified for similar work, However, a new rate or price shall be appropriate for an item of work if:

(i) the work is instructed under Clause 13 [Variations and Adjustments], and
(ii) no rate or price is specific in the Contract for this item, and
(iii) no specified rate or price is appropriate because the item of work is not of similar character, or is not executed under similar conditions, as any item in the Contract.

Each new rate or price shall be derived from any relevant rates or prices in the Contract, with reasonable adjustments to take account of the matters described in sub-paragraph (a), as applicable only if the preliminaries are priced separately in the relevant document in Schedules and not factored in the item rates stated in Bill of Quantities.

If no rates or prices are relevant for the derivation of a new rate or price, it shall be based on market rates as per the quotations received to the Project Developer.

If, and only if, work cannot be evaluated on any of the foregoing bases in second and third paragraphs hereof, then the evaluation shall be based on day work rates in the Contract. If no day work rates are relevant, evaluation shall be based on the cost of necessary Plant, Materials or Goods, labour and any additional equipment necessary for the execution of the works plus percentage of overheads and profits. This percentage shall be deemed to compensate adequately the Agency in respect of all supervision, the use of Agency's Equipment, overheads, profit and all other costs incurred in or connected with the execution of the work.

Until such time as an appropriate rate or price is agreed or determined, the Project Manager shall determine a provisional rate or price for the purposes of Interim Payment Certificates.

13.4. OMISSIONS

Whenever the omission of any work forms a part (or all) of a Variation, the value of which has not been agreed, if:

(a) The Agency will incur (or has incurred) cost which, if the work had not been omitted, would have been deemed to be covered by a sum forming part of the Accepted Contract Amount.
(b) The omission of the work will result (or has resulted) in this sum not forming part of the Contract Price; and
(c) This cost is not deemed to be included in the evaluation of any substituted work.

Then the Agency shall give notice to the Project Manager accordingly, with supporting. Upon receiving this notice, the Project Manager shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine this cost, which shall be included in the Contract Price.

14. VARIATIONS AND ADJUSTMENTS

14.1. RIGHT TO VARY

Variations may be initiated by the Project Manager at any time prior to issuing the Taking-Over Certificate for the Works, either by an instruction or by a request for the Agency to submit a proposal.

The Agency shall execute and be bound by each Variation, unless the Agency promptly gives notice to the Project Manager stating (with supporting particulars) that the Agency cannot readily obtain the Goods required for the Variation. Upon receiving this notice, the Project Manager shall cancel, confirm or vary the instruction. The Agency is obligated to give us the variations within 3 days if any change is noticed by Project Developer, if the variation is not intimated to the Project Developer within this time, then the Agency's variation shall stand null and void.

Each Variation may include:

(a) significant changes to the quantities of any item of work included in the Contract (however, such changes do not necessarily constitute a Variation),
(b) significant changes to the quality and other characteristics of any item of work
(c) changes to the levels, positions and / or dimensions of any part of the Works,
(d) omission of work, unless it is to be carried out by others,
(e) any additional work, Plant, Materials or services necessary for the Permanent Works, including any associated Tests on Completion, boreholes and other testing and exploratory work, or
(f) changes to the sequence or timing of the execution of the Works.

The Agency shall not make any alteration and/or modification of the Permanent Works, unless until the Project Manager instructs or approves a Variation.

For the avoidance of doubt, the term "Variation" shall not only include changes as aforesaid but also include the changes which may be designed to alter the use to which the Works will be put but shall exclude any instruction (which would otherwise be a Variation) which has arisen due to or is necessitated by or is intended to cure any default of or breach of contract by the Agency.

14.2. VALUE ENGINEERING

The Agency may, at any time, submit to the Project Manager a written proposal which (in the Agency's opinion) will, if adopted, (i) accelerate completion, (ii) reduce the cost to the Project Developer of executing, maintaining or operating the Works, (iii) improve the efficiency or value to the Project Developer of the completed Works, or (iv) otherwise be of benefit to the Project Developer.

The proposal shall be prepared at the cost of the Agency and shall include the items listed in Sub-Clause 13.3 [Variation Procedure].

If a proposal, which is approved by the Project Manager, includes a change in the design of part of the Permanent Works, then unless otherwise agreed by both Parties:

(a) The Agency shall design this part,
(b) Sub-paragraphs (a) to (d) of Sub-Clause 4.1 [Agency's General Obligations] shall apply, and

(c) If these changes results in a reduction in the contract price of this part, the Project Manager shall proceed in accordance with Sub-Clause 3.5 [Determinations]:

14.3. VARIATION PROCEDURE

If the Project Manager requests a proposal, prior to instructing a Variation, the Agency shall respond in writing as soon as practicable, either by giving reasons why he cannot comply (if this is the case) or by submitting:

(a) A description of the proposed work to be performed and a programme for its execution,
(b) The Agency's proposal for any necessary modifications to the programme according to Sub-Clause 8.3 [Programme] and to the Time for Completion, and
(c) The Agency's proposal for evaluation of the Variation.

The Project Manager shall, as soon as practicable after receiving such proposal (under Sub-Clause 13.2 [Value Engineering] or otherwise), respond with approval as change order, disapproval or comments. The Agency shall not proceed with any work in absence of a signed change order released by Project Manager on behalf of Project Developer.

The Agency shall not proceed with additional scope of work without prior Approval from Project Developer/Project Developer's Representative through Project Manager.

Each instruction to execute a Variation, with any requirements for the recording of Costs, shall be issued by the Project Manager to the Agency, who shall acknowledge receipt.

Each Variation shall be evaluated in accordance with Clause 12 [Measurement and Evaluation] unless the Project Manager instructs or approves otherwise in accordance with this Clause.

14.4. PAYMENT IN APPLICABLE CURRENCIES

All the payments shall be made in INR (Indian National Rupee).

14.5. PROVISIONAL SUMS

The term Provisional Sums also refers to the Prime Cost Sums or P.C. Sums. Each Provisional Sum shall only be used, in whole or in part, in accordance with the Project Manager's instructions, and the Contract Price shall be adjusted accordingly. The total sum paid to the Agency shall include only such amounts, for the work, supplies or services to which the Provisional Sum relates, as the Project Manager shall have instructed. For each Provisional Sum, the Project Manager may instruct:

(a) Work to be executed (including Plant, Materials or services to be supplied) by the Agency and valued under Sub-Clause 13.3 [Variation Procedure]; and / or
(b) Plant, Materials or services to be purchased by the Agency, from a nominated Subcontractor (as defined in Clause 5 [Nominated Sub-Agencies]) or otherwise; and for which there shall be included in the Contract Price:
    (i) The actual amounts paid (or due to be paid) by the Agency, and

(ii) a sum for overhead changes and profit, calculated as a percentage of these actual amounts by applying the relevant percentage rate (if any) stated in the appropriate Schedule.

The Agency shall, when required by the Project Manager, produce quotations, invoices, vouchers and accounts or receipts in substantiation.

14.6. DAY-WORK

For work of a minor or incidental nature, the Project Manager may instruct that a Variation shall be executed on a day-work basis. The work shall then be valued in accordance with the Day-work Schedule included in the Contract, and the following procedure shall apply. If a Day-work Schedule is not included in the Contract, this Sub-Clause shall not apply.

Before ordering Goods for the work, the Agency shall submit quotations to the Project Manager. When applying for payment, the Agency shall submit invoices, vouchers and accounts or receipts for any Goods.

Except for any items for which the Day-work Schedule specifies that payment is not due, the Agency shall deliver each day to the Project Manager accurate statements in duplicate which shall include the following detains of the resources used in executing the precious day's work:

(a) the names, occupations and time of Agency's Personnel,
(b) the identification, type and time of Agency's Equipment and Temporary Works, and
(c) the quantities and types of Plant and Materials used.

One copy of each statement will, if correct, or when agreed, be signed by the Project Manager and returned to the Agency. The Agency shall then submit priced statements of these resources to the Project Manager, prior to their inclusion in the next Statement under Sub-Clause 14.3 [Application for Interim Payment Certificates].

The Project Developer is not liable to pay any escalation or variation on all materials labour fuel plant and equipment's used by Agency for the Works.

14.7. EXTRA ITEMS: NOT APPLICABLE

15. CONTRACT PRICE AND PAYMENT

15.1. THE CONTRACT PRICE

Unless otherwise stated elsewhere in the Contract:

(a) The Contract Price shall be agreed or determined under Sub-Clause 12.3 [Evaluation] and be subject to adjustments in accordance with the Contract.

(b) The Agency shall pay all taxes, duties and fees required to be paid by him under the Contract, and the Contract Price shall not be adjusted for any of these costs.

(c) Any quantities which may be set out in the Bill of Quantities or other Schedule are estimated quantities and are not to be taken as the actual and correct quantities:

(i) of the Works which the Agency is required to execute, or

(ii) for the purposes of Clause 12 [Measurement and Evaluation]; and

(d) the Agency shall submit to the Project Manager, within 60 days in after the Commencement Date mutually agreed stages, a re-measured bill of quantities worked out from drawings and designs issued by Project Manager. Such bill of quantities shall be supported by valid measurement sheets in the format agreed with the Project Manager. The Project Manager may take account of such Bill of Quantities when preparing Payment Certificates but shall not be bound by it.

The Contract Price shall in no situation exceed the Accepted Contract Amount unless there has been an increase in Cost in accordance with the conditions contained in this Contract.

15.2. SCHEDULE OF PAYMENTS

a) CAPEX:

- 60% of contract value shall be paid on pro-rata basis against material delivery after recoveries of retention on Pro-rata basis and the payment shall be made within 30 days from the date of submission of bills along with supporting documents.
- 20% of contract value shall be paid on pro-rata basis against installation after recoveries of retention on Pro-rata basis and the payment shall be made within 30 days from the date of submission of bills along with supporting documents.
- 10% of contract value shall be paid against testing, commissioning, submission of as-built drawings, Net-metering and liaison work, submission of O&M documents, manuals, after recoveries of retention money on Pro-rata basis.
- Balance 10% of contract value shall be paid against handing over of works after recover of retention money.

b) OPEX:

- Monthly Bill based on consumption shall be released with 15 days from the date of certified invoice, measurements, etc. along with necessary compliances. (Meter unit shall be jointly verified by Developer and MWCJ representative at end of each calendar month on the basis invoice shall be generated by developer and payment shall be released by MWCJ within 30 days after receipt of proper invoice every month.)

15.3. CESSATION OF PROJECT DEVELOPER'S LIABILITY

The Project Developer shall not be liable to the Agency for any matter or thing under or in connection with the Contract or execution of the Works, except to the extent that the Agency shall have included an amount expressly for it:

(a) in the final statement and also

(b) (except for matters or things arising after the issue of the Taking-Over Certificate for the Works) in the Statement at completion described in Sub-Clause 14.10 [Statement at Completion].

15.4. DISBURSEMENT

Agency shall also submit a declaration, clearly stating that all the payments due to the Agencies vendors/ suppliers for the Works and Subcontractors including the labour Agencies engaged for the Works:

1. Salaries of Agencies employees engaged for the Works
2. Payments to the Subcontractors and labour Agencies for the period stated above.
3. Payment to all the suppliers and vendors for the Works.
4. All the statutory payments towards Income Tax, Sales Tax, Service Tax etc.
5. Payment of the net liability of the GST

In case the Project Developer wants to see the documentary evidence for all or any of the above, the Agency shall produce the same without delay.

In case the Agency fails to submit such a declaration consecutively for two progress payments then the procedure enlisted in the following paragraph shall come in effect without any further representation on the issue.

The Agency will open an Escrow account in a nationalized/Schedule A bank of the Project Developer's choice. The Agency shall enter into an Escrow agreement as per the proforma annexed to the Contract. This Escrow account will be for the sole purpose of the Works only. This Escrow bank account shall be operated under control of the Project Developer. The Agency by signing this contract confirms his concurrence to facilitate the opening and operating this account. The Agency shall not deposit any money in this account for any purpose whatsoever without the written permission of the Project Developer. Any deviation will be held as a breach of this Contract. The purpose for this arrangement is to ensure smooth payments to the suppliers/vendors/Subcontractors. The Project Developer is not liable for any claims or lien or any dispute that the Agency may have to face from a supplier/vendor/ or a Subcontractor. This is only an arrangement and by signing this Contract, the Agency agrees that the Project Developer is in no way liable for any payment or shortfall of payment to any of the suppliers / vendors or sub-Agencies. On approval of the progress payment, the Agency shall receive a part of the approved payment in this account. The suppliers / vendors or sub-Agencies shall be paid through this account. Notwithstanding this method of payment, no Project Developer employee relationship will be deemed to have been created between the Subcontractors and the Project Developer. Cost for opening and operating this Escrow Account shall be fully borne and paid by the Contactor.

15.5. WITHHOLDING OF PAYMENTS

The Project Manager may withhold payment or, on account of subsequently discovered evidence, nullify the whole or a part of any payment certificate to such extent as may be necessary to protect the Project Developer from loss on account of including but not limited to the following:

- Defective work not remedied by the Agency.

- Failure of the Agency to make payments properly and regularly to its own workers, to its Sub-Agencies, to its suppliers.
- Damage by the Agency to the work of other Agencies, Sub-Agencies or Vendors.
- A reasonable doubt that the Contract cannot be completed for the balance unpaid amount.
- A reasonable doubt that the Agency intends to leave work items incomplete.
- Failure of the Agency to execute the Works in conformity with the Contract Documents.
- Failure of the Agency to meet or keep-up with the Approved Construction Programme.
- Failure of the Agency to comply with and fulfil all contractual obligations and liabilities stipulated in the Contract.
- Failure of the Agency to produce clear and correct compliance documents with relation to statutory norms, rules, regulations etc.

16. TERMINATION BY PROJECT Developer

16.1. NOTICE TO CORRECT

If the Agency fails to carry out any obligation under the Contract, the Project Manager may by notice require the failure and to remedy it within a specified reasonable time.

16.2. TERMINATION BY PROJECT Developer

The Project Developer shall be entitled to terminate the Contract at any point of time if the Agency:

(a) fails to comply with his obligations as per Sub-Clause 4.2 [Performance Guarantee] or with a notice under Sub-Clause 15.1 [Notice to Correct],

(b) abandons the Works or otherwise plainly demonstrates the intention not to continue performance of his obligations under the Contract,

(c) without reasonable excuse fails:

(i) to proceed with the Works in accordance with Clause 8 [Commencement, Delays and Suspension], or

(ii) to comply with a notice issued under Sub-Clause 7.5 [Rejection] or Sub-Clause 7.6 [Remedial Work], within 28 days after receiving it,

(d) subcontracts the whole of the Works or assigns the Contract without the required agreement without taking the prior approval from the Project Developer,

(e) becomes bankrupt or insolvent, goes into liquidation, has a receiving or administration order made against him, compounds with his creditors, or carries on business under a receiver, trustee or manager for the benefit of his creditors, or if any act is done or event occurs which (under applicable laws) has a similar effect to any of these acts or events, or

(f) gives or offers to give (directly or indirectly) to any person any bribe, gift, gratuity commission or other thing of value, as an inducement or reward:

(i) for doing or forbearing to do any action in relation to the Contract, or

(ii) for showing or forbearing to show favour or dis favour to any person in relation to the Contract,

or if any of the Agency's Personnel, agents or Subcontractors gives or offers to give (directly or indirectly) to any person any such inducement or reward as is described in this sub-

paragraph (f) However, lawful inducements and rewards to Agency's Personnel shall not entitle termination.

Without prejudice to the rights and remedies available to the Project Developer under this Agreement or law, the Project Developer may at any point of time terminate this Agreement upon happening of any one or more of the following events:

(g) Agency commits a breach of all or any of the terms of this Agreement or fails or neglects to observe or commits or allows to be committed any breach of the terms, conditions provision, representation warranties, covenants or stipulations of this Agreement.
(h) Agency discontinues its business by whatsoever reasons.
(i) Agency is dissolved or liquidated, or any petition is filed against the Agency for the same, makes a general assignment for the benefit of its creditors, or files or has filed against it, a petition in Bankruptcy or has a receiver appointed for a substantial part of its assets.
(j) If any of the representations made by Agency are found to be false or wrong.
(k) If Agency does or suffers any act or thing or omits to do or suffers to be done any act, thing, deed or matter whereof in the consequence of which the business of the Project Developer may be or is likely to suffer.
(l) If Agency acts beyond the scope of this Agreement or is suspected or falsifying records or.
(m) If the Agency by its act of omission or commission given to the Project Developer reasonable ground to consider that its rights may; be prejudiced or jeopardized.
(n) fails to comply with Sub-Clause 6.12 [Workmen],
(o) non-compliance of documents.

In any of these events or circumstances, the Project Developer may, upon giving 14 days' notice to the Agency, terminate the Contract and expel the Agency from the Site. However, in the case of sub-paragraph (e) or (f), the Project Developer may by notice terminate the Contract immediately.

The Project Developer's election to terminate the Contract shall not prejudice any other rights of the Project Developer, under the Contract or otherwise.

The Agency shall then leave the Site and deliver any required goods, all Agency's Documents and other design documents made by or for him, to the Project Manager. However, the Agency shall use his best efforts to comply immediately with any reasonable instructions included in the notice (i) for the assignment or novation of any subcontract, and (ii) for the protection of life or property or for the safety of the Works.

After termination, the Project Developer may complete the Works and / or arrange for any other entities to do so. The Project Developer and these entities may then use any Goods, Agency's documents and other design documents made by or on behalf of the Agency.

The Project Developer shall then give notice that the Agency's Equipment and Temporary Works will be released to the Agency at or near the Site. The Agency shall promptly arrange their removal, at the risk and cost of the Agency. However, if by this time

the Agency has failed to make a payment due to the Project Developer, these items may be sold by the Project Developer on the terms and conditions which Project Developer may deem fit in order to recover this payment. Any balance of the proceeds shall then be paid to the Agency.

16.3. VALUATION AT DATE OF TERMINATION

As soon as practicable after a notice of termination under Sub-Clause 15.2 [Termination by Project Developer] has taken effect, the Project Manager shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine the value of the Works. Goods and Agency's Documents and any other sums due to the Agency for work executed in accordance with the Contract.

16.4. PAYMENT AFTER TERMINATION

After a notice of termination under Sub-Clause 15.2 [Termination by Project Developer], has taken effect, the Project Developer may:

(a) proceed in accordance with Sub-Clause 2.5 [Project Developer's claims],

(b) withhold further payments to the Agency until the costs of execution, completion and remedying of any defects, damages for delay in completion (if any), and all other costs incurred by the Project Developer, have been established, and /or

(c) recover from the Agency any losses and damages incurred by the Project Developer and any extra costs of completing the Works, after allowing for any sum due to the Agency under Sub-Clause 15.3 [Valuation at Date of Termination]. After recovering any such losses, damages and extra costs, the Project Developer shall pay balance to the Agency.

16.5. PROJECT DEVELOPER'S ENTITLEMENT TO TERMINATION

Notwithstanding with anything contained in this contract, in case at any point of time after the issue of Letter of Acceptance, the Project Developer shall for any reason whatsoever not require the whole or part of the Works to be carried out by the Agency or intend to terminate this Contract for any other reason whatsoever, the Project Developer shall give notice in writing of the fact to the Agency without assigning any reason to foreclose and/or terminate the Works within 45 days of receipt of such notice, who shall have no claim to any payment of compensation or otherwise howsoever on account of any profit or advantage, which he might have derived from execution of the Work in full but which he did not derive in consequence of the foreclosing of the Work. The Agency shall be paid at Contract Rates for the portion of Work executed including such additional works e.g., clearing of the Site, etc. as may be rendered necessary by the said foreclosing. The Agency shall also be allowed a reasonable payment for any expenses sustained on account of labour, materials, Agency's Equipment collected but which could not be utilized on the Works as verified by the Project Developer and certified by him. Upon such foreclosure Project Developer shall be at absolute liberty and entitled to carry remaining work through any other Agency or in any other manner as Project Developer deems fit.

Upon such termination or foreclosure of the contract the Agency shall have no interest or right of any nature in the Works and he shall not create any impediment to the other/ new Agency or the Project Developer in carrying out the balance Works.

16.6. APPOINTMENT OF NEW AGENCY AFTER TERMINATION

If the termination of this contract takes place in accordance with Sub-Clause 15.2; and Project Developer appoints a new Agency at the price solely negotiated by Project Developer following a competitive bidding process.

Any difference in contract price finalized with the new Agency and that of this contract shall be borne and paid by the Agency or adjusted from the payment to be made to the Agency in accordance with Sub-Clause 15.3 & 15.4.

17. SUSPENSION AND TERMINATION BY AGENCY

17.1. AGENCY'S ENTITLEMENT TO SUSPEND WORK

Only, if the Project Developer fails to comply with Sub-Clause 14.7 [Payment], the Agency may, after giving not less than 45 days' notice to the Project Developer, suspend work unless and until the Agency has received the Payment certificate, reasonable evidence or payment, as the case may be and as described in the notice.

If the Agency subsequently receives such Payment Certificate, evidence or payment (as described in the relevant Sub-Clause and in the above notice) before giving a notice of termination, the Agency shall resume normal working as soon as is reasonably practicable.

If the Agency suffers delay and / or incurs Cost as a result of suspending work (or reducing the rate of work) in accordance with this Sub-Clause, the Agency shall give notice to the Project Manager and shall be entitled subject to Sub-Clause 20.1 [Agency's Claims] to:

(a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [Extension of Time for Completion], and

After receiving this notice, the Project Manager shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine these matters.

17.2. TERMINATION BY AGENCY

The Agency shall be entitled to terminate the Contract if:

(a) the Project Developer substantially fails to perform his obligations under the Contract,

(b) a prolonged suspension affects the whole of the Works as described in Sub-Clause 8.11 [Prolonged Suspension], or

(c) the Project Developer becomes bankrupt or insolvent, goes into liquidation, has a receiving or administration order made against him, compounds with his creditors, or carries on business under a receiver, trustee or manager for the benefit of his creditors, or if any act is done or event occurs which (under applicable Laws) has a similar effect to any of these acts or events.

In any of these events or circumstances, the Agency may, upon giving 45 days' notice to the Project Developer, terminate the Contract. However, in the case of sub-paragraph (f) or (g), the Agency may by notice terminate the Contract immediately.

17.3. CESSATION OF WORK AND REMOVAL OF AGENCY'S EQUIPMENT

After a notice of termination under Sub-Clause 15.5 [Project Developer's Entitlement to Termination], Sub-Clause 16.2 [Termination by Agency] or Sub-Clause 19.6 [Optional Termination, Payment and Release] has taken effect, the Agency shall promptly:

(a) cease all further work, except for such work as may have been instructed by the Project Manager for the protection of life or property or for the safety of the works,

(b) hand over Agency's documents, Plant, Materials and other work, for which the Agency has received payment, and

(c) remove all other Goods from the Site, except as necessary for safety, and leave the Site at his own cost.

17.4. PAYMENT ON TERMINATION

After a notice of termination under Sub-Clause 16.2 [Termination by Agency] has taken effect, the Project Developer shall promptly:

(a) return the Performance Security to the Agency,

(b) pay the Agency in accordance with Sub-Clause19.6 [Optional Termination, Payment and Release],

18. RISK AND RESPONSIBILITY

18.1. INDEMNITIES

The Agency shall indemnify and keep indemnified and hold harmless the Project Developer till issuance of Performance Certificate, the Project Developer's Personnel, and their respective agents up to a maximum amount of the contract value, against and from all claims, damages, losses and expenses (including legal fees and expenses) in respect of:

(a) bodily injury, sickness, disease or death, of any person whatsoever arising out of or in the course of or by reason of the Agency's design (if any), the execution and completion of the Works and the remedying of any defects, unless attributable to any negligence, wilful act or breach of the contract by the Project Developer, the Project Developer's Personnel, or any of their respective agents, and

(b) damage to or loss of any property, real or personal (other than the Works), to the extent that such damage or loss:

(i) arises out of or in the course of or by reason of the Agency's design (if any), the execution and completion of the Works and the remedying of any defects, and

(ii) is attributable to any negligence, wilful act or breach of the Contract by the Agency, the Agency's Personnel, their respective agents; or anyone directly or indirectly employed by any of them.

18.2. AGENCY'S CARE OF THE WORKS

The Agency shall take full responsibility for the care of the Works and Goods from the Commencement Date until the Taking-Over Certificate is issued (or is deemed to be issued under Sub-Clause 10.1 [Taking Over of the Works and Sections]) for the Works, when responsibility for the care of the Works shall pass to the Project Developer. If a Taking-Over Certificate is issued (or is so deemed to be issued) for any Section or part of the Works, responsibility for the care of the Section or part shall then pass to the Project Developer.

After responsibility has accordingly passed to the Project Developer, the Agency shall take responsibility for the care of any work which is outstanding work has been completed.

If any loss or damage happens to the Works, Goods or Agency's Documents during the period when the Agency is responsible for their care, from any cause not listed in Sub-Clause 17.3 [Project Developer's Risks], the Agency shall rectify the loss or damage at the Agency's risk and cost, so that the Works, Goods and Agency's Documents conform with the Contract.

The Agency shall be liable for any loss or damage caused by any actions performed by the Agency after a Taking-Over Certificate has been issued. The Agency shall also be liable for any loss or damage which occurs after a Taking-Over Certificate has been issued and which arose from a previous event for which the Agency was liable.

18.3. PROJECT DEVELOPER'S RISKS

The risks referred to in Sub-Clause 17.4 below are:

(a) use or occupation by the Project Developer of any part of the Permanent Works, except as may be specified in the Contract,

(b) design of any part of the Works by the Project Developer's Personnel or by others for whom the Project Developer is responsible,

18.4. CONSEQUENCES OF PROJECT DEVELOPER'S RISKS

If and to the extent that any of the risks listed in Sub-Clause 17.3 above results in loss or damage to the Works, Goods or Agency's documents, the Agency shall promptly give notice to the Project Manager and shall rectify this loss or damage to the extent required by the Project Manager.

If the Agency suffers delay and / or incurs Cost from rectifying this loss or damage, the Agency shall give a further notice to the Project Manager and shall be entitled subject to Sub-Clause 20.1 [Agency's Claims] to:

(a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [Extension of time for Completion], and

(b) Payment of any such Cost, which shall be included in the contract Price.

After receiving this further notice, the Project Manager shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine these matters.

18.5. INTELLECTUAL AND INDUSTRIAL PROPERTY RIGHTS

In this Sub-Clause, "infringement" means an infringement (or alleged infringement) of any patent, registered design, copyright, trademark, trade name, trade secret or other intellectual or industrial property right relating to the Works; and "claim" means a claim (or proceedings pursuing a claim) alleging an infringement.

Whenever a Party does not give notice to the other Party of any claim within 28 days of receiving the claim, the first Party shall be deemed to have waived any right to indemnity under this Sub-Clause.

The Agency shall bear the cost arising from any claim alleging an infringement which is or was:

(a) result of the Agency's compliance with the Contract, unless the Agency was aware or with reasonable diligence ought to have become aware that the same would result in an infringement, or

(b) a result of any Works being used by the Project Developer:

(i) for a purpose other than that indicated by, or reasonably to be inferred from, the Contract, or

(ii) in conjunction with anything not supplied by the Agency unless such use was disclosed to the Agency prior to the Base Date or is stated in the Contract.

The Agency shall indemnify and hold the Project Developer harmless against and from any other claim up to a maximum contract value which arises out of or in relation to (i) the manufacture, use, sale or import of any Goods, or (ii) any design for which the Agency is responsible.

18.6. LIMITATION OF LIABILITY

Neither Party shall be liable to the other Party for loss of use of any Works, loss of profit, loss of any contract or for any indirect or consequential loss or damage which may be suffered by the other Party in connection with the Contract unless specifically provided for.

The total liability of the Agency to the Project Developer, under or in connection with the Contract other than under Sub-Clause 4.19 [Electricity, Water and Gas], Sub-Clause 4.20 [Equipment and Free-Issue Material], Sub-Clause 17.1 [Indemnities] and Sub-Clause 17.5 [Intellectual and Industrial Property Rights], shall not exceed the sum up to 25% of the Accepted Contract Amount.

This Sub-Clause shall not limit liability in any case of fraud, deliberate default or reckless misconduct by the defaulting Party.

19. INSURANCE

19.1. GENERAL REQUIREMENTS FOR INSURANCES

In this Clause, "insuring Party" means, for each type of insurance, the Party responsible for effecting and maintaining the insurance specified in the relevant Sub-Clause.

Wherever the Agency is the insuring Party, each insurance shall be affected with insurers and in terms approved by the Project Developer. These terms shall be consistent with any terms agreed by both parties before the date of the Letter of Acceptance. This agreement of terms shall take precedence over the provisions of this Clause.

Wherever the Project Developer is the insuring Party, each insurance shall be affected with insurers and in terms consistent with the details annexed to the Contract conditions.

If a policy is required to indemnify joint insured, the cover shall apply separately to each insured as though a separate policy had been issued for each of the joint insured. If a policy indemnifies additional joint insured, namely in addition to the insured specified in this Clause, (i) the Agency shall act under the policy on behalf of these additional joint insured except that the Project Developer shall act for Project Developer's Personnel, (ii) additional joint

insured shall not be entitled to receive payments directly from the insurer or to have any other direct dealings with the insurer, and (iii) the insuring Party shall require all additional joint insured to comply with the conditions stipulated in the policy.

Each policy insuring against loss or damage shall provide for payments to be made in the currencies required to rectify the loss or damage. Payments received from insurers shall be used for the rectification of the loss or damage.

The relevant insuring party shall, before the commencement of any work on Site, submit to the other Party:

(a) evidence that the insurances described in this Clause have been affected and

(b) copies of the policies for the insurances described in Sub-Clause 18.2 [Insurance for Works and Agency's Equipment] and Sub-Clause 18.3 [Insurance against Injury to Persons and Damage to Property].

Project Developer shall procure the Insurances as listed under Appendix to RFP. The Agency shall be liable to take all other Insurances in the manner and to the extent specified in Clause 18 and Appendix to RFP.

When each premium is paid, the insuring Party shall submit evidence of payment to the other Party. Whenever evidence or policies are submitted, the insuring Party shall also give notice to the Project Manager.

Each party shall comply with the conditions stipulated in each of the insurance policies. The insuring Party shall keep the insurers informed of any relevant changes to the execution of the works and ensure that insurance is maintained in accordance with this Clause.

Neither Party shall make any material alteration to the terms of any insurance without the prior approval of the other Party. If an insurer makes (or attempts to make) any alteration, the Party first notified by the insurer shall promptly give notice to the other Party

If the insuring Party fails to effect and keep in force any of the insurances it is required to effect and maintain under the contract or fails to provide satisfactory evidence and copies of policies in accordance with this Sub-Clause, the other Party may (at its option and without prejudice to any other right or remedy) effect insurance for the relevant coverage and pay the premiums due. The insuring Party shall pay the amount of these premiums to the other Party, and the contract Price shall be adjusted accordingly.

Nothing in this Clause limits the obligations, liabilities or responsibilities of the Agency or the Project Developer, under the other terms of the contract or otherwise. Any amounts not insured or not recovered from the insurers shall be borne by the Agency and / or the Project Developer in accordance with these obligations, liabilities or responsibilities. However, if the insuring Party fails to effect and keep in force an insurance which is available and which it is required to effect and maintain under the contract, and the other Party neither approves

the omission nor effects insurance for the coverage relevant to this default, any moneys which should have been recoverable under this insurance shall be paid by the insuring Party.

Payments by one party to the other Party shall be subject to Sub-Clause 2.5 [Project Developer's Claims] or Sub-Clause 20.1 [Agency's Claims], as applicable.

19.2. INSURANCE FOR WORKS AND AGENCY'S EQUIPMENT

The insuring party shall insure the Works, Plant, Equipment's, Materials and Agency's Documents for not less than the full reinstatement cost including the costs of demolition, removal of debris and professional fees and profit. This insurance shall be effective from the Commencement Date, until the date of issue of the Taking-Over Certificate for the Works. Agency's All Risk (CAR) insurance if procured by Project Developer will not cover Plant, Equipment, Materials and Documents of Agency and the Agency shall solely be responsible for the same.

The Agency shall maintain this insurance to provide cover until the date of issue of the Work Completion certificate, for loss or damage for which the Agency is liable arising from a cause occurring prior to the issue of the Taking-Over Certificate, and for loss or damage caused by the Agency in the course of any other operations (including those under Clause 11 [Defects Liability]).

The Agency shall insure the Agency's Equipment for not less that the full replacement value, including delivery to Site. For each item of Agency's Equipment, the insurance shall be effective while it is being transported to the Site and until it is no longer required as Agency's Equipment.

Unless otherwise stated in the Contract Conditions, insurances under this Sub-Clause:

(a) shall be affected and maintained by the Agency as insuring Party,

(b) shall be in the joint names of the Parties, who shall be jointly entitled to receive payments from the insurers, payments being held or allocated between the Parties for the sole purpose of rectifying the loss or damage,

(c) shall cover all loss and damage from any cause not listed in Sub-Clause 17.3 [Project Developer's Risks],

(d) shall also cover loss or damage to a part of the Works which is attributable to the use or occupation by the Project Developer of another part of the Works, and loss or damage from the risks listed in sub-paragraph, (g) of Sub-Clause 17.3 [Project Developer's Risks], excluding (in each case) risks which are not insurable at commercially reasonable terms, with deductibles per occurrence of not more than the amount stated in the appendix to RFP (if an amount is not so stated, this sub-paragraph (d) shall not apply), and

(e) may however exclude loss of, damage of, and reinstatement of:

(i) a part of the Works which is in a defective condition due to a defect in its design, materials or workmanship (but cover shall include any other parts which are lost or damaged as a direct result of this defective condition and not as described in sub-paragraph (ii) below),

(iii) a part of the Works which is lost or damaged in order to reinstate any other part of the Works if this other part is in a defective condition due to a defect in its design, materials or workmanship,

19.3. INSURANCE AGAINST INJURY TO PERSONS AND DAMAGE TO PROPERTY

The Agency shall insure against each party's liability for any loss, damage, death or bodily injury which may occur to any physical property (except things insured under Sub-Clause 18.2 [Insurance for works and Agency's Equipment]) or to any person (except persons insured under Sub-Clause 18.4 [Insurance for Agency's Personnel]), which may arise out of the Agency's performance of the Contract and occurring before the issue of the Performance Certificate.

This insurance shall be for a limit per occurrence of not less than the amount stated in the Appendix to RFP, with no limit on the number of occurrences. If an amount is not stated in the Appendix to RFP, this Sub-Clause shall not apply.

Unless otherwise stated in the Contract conditions, the insurances specified in this Sub-Clause:

(a) shall be affected and maintained by the Agency as insuring Party,
(b) shall be in the joint names of the Parties,
(c) shall be extended to cover liability for all loss and damage to the Project Developer's property (except things insured under Sub-Clause 18.2) arising out of the Agency's performance of the Contract, and
(d) may however exclude liability to the extent that it arises from:

(i) the Project Developer's right to have the Permanent Works executed, over, under, in or through any land, and to occupy this land for the Permanent Works,
(ii) a cause listed in Sub-Clause 17.3 [Project Developer's Risks], except to the extent that cover is available at commercially reasonable terms.

19.4. INSURANCE FOR AGENCY'S PERSONNEL

The Agency shall affect and maintain insurance against liability for claims, damages, losses and expenses (including legal fees and expenses) arising from injury, sickness, disease or death of any person employed by the Agency or any other of the Agency's Personnel.

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

The insurance shall be maintained in full force and effect during the whole time that these personnel are assisting in the execution of the Works. For a Subcontractor's employees, the insurance may be affected by the Subcontractor, but the Agency shall be primarily responsible for compliance with this Clause.

The insurance policy effected by the Agency under this sub-clause shall be endorsed to include as jointly insured with the Agency, the Project Developer as Principal. The policy shall be further endorsed to extend cover to all workers upon the site including those who are not statutorily required to be insured under the Workmen's Compensation Act or any other applicable laws and must be sufficient and adequate to meet any claim arising out of or in the course of or by reason of the carrying out of the works.

The Agency shall also indemnify and keep the Project Developer indemnified till issuance of performance certificate against all claims, losses and damages which may be upon the Project Developer, whether under the Workmen's Compensation Act 1923 or any other applicable Laws, during the duration of this Contract or in respect of any employee of the Agency or Subcontractor and shall at his own expense effect and maintain until the end of the Defect Liability Period, with an insurance Developer, approved by the Project Developer, a policy of insurance against such risks and deposit such policy or policies with the Project Developer from time to time during the duration of this Contract.

20. FORCE MAJEURE

20.1. DEFINITION OF FORCE MAJEURE

In this Clause, "Force Majeure" means an exceptional event or circumstance:

(a) which is beyond a Party's control,
(b) which such Party could not reasonably have provided against before entering into the Contract,
(c) which, having arisen, such Party could not reasonably have avoided or overcome, and
(d) which is not substantially attributable to the other Party.

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

(i) war, hostilities (whether war be declared or not), invasion, act of foreign enemies,
(ii) rebellion, terrorism, revolution, insurrection, military or usurped power, of civil war,
(iii) riot, commotion, disorder, strike or lockout by persons other than the Agency's Personnel and other employees of the Agency and Sub-Agencies,
(iv) munitions of war, explosive materials, ionising radiation or contamination by radioactivity, except as may be attributable to the Agency's use of such munitions, explosives, radiation or radioactivity, and
(v) natural catastrophes such as earthquake, hurricane, typhoon or volcanic activity.

20.2. NOTICE OF FORCE MAJEURE

If a Party is or will be prevented from performing any of its obligations under the Contract by Force Majeure, then it shall give notice to the other Party of the event or circumstances constituting the Force Majeure and shall specify the obligations, the performance of which is or will be prevented. The notice shall be given within 14 days after the Party became aware, or should have become aware, of the relevant event or circumstance constituting Force Majeure.

The Party shall, having given notice, be excused performance of such obligations for so long as such Force Majeure prevents it from performing them.

Notwithstanding any other provision of this Clause, Force Majeure shall not apply to obligations of either party to make payments to the other party or to recover from the other party under the contract.

20.3. DUTY TO MINIMISE DELAY

Each party shall at all times use all reasonable endeavours to minimize any delay in the performance of the Contract as a result of Force Majeure.

A Party shall give notice to the other Party when it ceases to be affected by the Force Majeure.

20.4. CONSEQUENCES OF FORCE MAJEURE

If the Agency is prevented from performing any of his obligations under the Contract by Force Majeure of which notice has been given under Sub-Clause 19.2 [Notice of Force Majeure], and suffers delay by reason of such Force Majeure, the Agency shall be entitled subject to Sub-Clause 20.1 [Agency's Claims] to:

(a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [Extension of Time for Completion], and

(b) Neither party shall claim for payment of cost incurred or arising from the consequences of Force Majeure except for those incidences covered under CAR Insurance policy.

Under the terms of this CAR policy, the Agency shall prepare and forward all such claims to the insurance Developer and all such claims shall be directly covered / payable by the insurance Developer to the Agency

After receiving this notice, the Project Manager shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine these matters.

20.5. FORCE MAJEURE AFFECTING SUBCONTRACTOR

If any Subcontractor is entitled under any contract or agreement relating to the Works to relief from force majeure on terms additional to or broader than those specified in this Clause, such additional or broader force majeure events or circumstances shall not excuse the Agency's non-performance or entitle him to relief under this Clause.

20.6. OPTIONAL TERMINATION, PAYMENT AND RELEASE

If the execution of substantially all the works in progress is prevented for a continuous period of 84 days by reason of Force Majeure of which notice has been given under Sub-Clause 19.2 [Notice of Force Majeure], or for multiple periods which total more than 140 days due to the same notified Force Majeure, then either Party may give to the other Party a notice of termination of the Contract. In this event, the termination shall take effect 7 days after the notice is given, and the Agency shall proceed in accordance with Sub-Clause 16.3 [Cessation of Work and Removal of Agency's Equipment].

Upon such termination, the Project Manager shall determine the value of the work done and issue a Payment Certificate which shall include:

(a) the amounts payable for any work carried out for which a price is stated in the Contract.
(b) the Cost of Plant and Materials ordered for the Works which have been delivered to the Agency, or of which the Agency is liable to accept delivery: this Plant and Materials shall become the property of (and be at the risk of) the Project Developer when paid for by the Project Developer, and the Agency shall place the same at the Project Developer's disposal.
(c) any other Cost or liability which in the circumstances was reasonably incurred by the Agency in the expectation of completing the Works.
(d) the Cost of removal of Temporary Works and Agency's Equipment from the Site and the return of these items to the Agency's works in his country (or to any other destination at no greater cost); and
(e) the Cost of repatriation of the Agency's staff and labour employed wholly in connection with the Works at the date of termination.

20.7. RELEASE FROM PERFORMANCE UNDER THE LAW

Notwithstanding any other provision of this clause, if any event or circumstance outside the control of the Parties (including, but not limited to, Force Majeure) arises which makes it impossible or unlawful for either or both Parties to fulfil its or their contractual obligations or which, under the law governing the Contract, entitles the Parties to be released from further performance of the Contract, then upon notice by either Party to the other Party of such event or circumstance:

(a) the Parties shall be discharged from further performance, without prejudice to the rights of either Party in respect of any previous breach of the Contract, and
(b) the sum payable by the Project Developer to the Agency shall be the same as would have been payable under Sub-Clause 19.6 [Optional Termination, Payment and Release] if the Contract had been terminated under Sub-Clause 19.6.

21. DISPUTES AND ARBITRATION

21.1. AMICABLE SETTLEMENT

If a dispute (of any kind whatsoever) arises between the Parties in connection with, or arising out of, the Contract or the execution of the Works, including any dispute as to any certificate, determination, instruction, opinion, or valuation of the Project Manager, either Party may refer the dispute through notice in writing to the Senior Management of the other party for its amicable settlement with copy to the Project Manager. Such notice shall clearly state that it is given under this Sub-Clause. Upon receipt of such notice by the other party 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 forty second day after the day on which such notice was received by the other party, even if no attempt at amicable settlement has been made.

21.2. ARBITRATION

All disputes and differences, failing amicable settlement under Sub-Clause 20.5 [Amicable Settlement] of GCC, shall be resolved through arbitration by a sole arbitrator appointed mutually by both the Parties and if both the Parties fail to mutually agree on the name of the Arbitrator then either party can approach the High Court for appointment of the sole arbitrator under Arbitration and Conciliation Act, 1996. The arbitration proceedings shall be conducted in accordance with the Arbitration and Conciliation Act, 1996, and/or statutory

modifications thereof. The arbitration award shall be final and binding on the parties. The venue of Arbitration proceedings shall be Jaipur, Rajasthan, India and language of the proceedings shall be in English. The seat of the Arbitration shall be exclusively in Jaipur, Rajasthan, India.

The Arbitrators shall have power to open up, review and revise any certificate, opinion, decision, requisition or notice save in regard to the excepted matters referred to in the preceding clause, and to determine all matters in dispute which shall be submitted to arbitration and of which notice shall have been given as aforesaid.

The Arbitrators shall make his or their award within six months (or such further extended time as may be decided by him or them as the case may be with the consent of the parties) from the date of entering on the reference. In case during the arbitration proceedings both the parties mutually settle, compromise or compound their dispute or difference, the reference to arbitration proceedings shall stand withdrawn or terminated, with effect from the date on which the parties file a joint memorandum of settlement thereof, with the arbitrators.

Upon every or any such reference, the cost of and incidental to the reference and award respectively shall be borne and paid by both the parties equally. The cost of the attorneys and cost incidental thereto shall be borne and paid by the concerned party alone. This submission shall be deemed to be a submission to arbitration within the meaning of the Arbitration and Conciliation Act, 1996 or any statutory modification thereof.

Notwithstanding anything contained in this clause and/or in the Contract the work under the Contract shall continue under any circumstances, during the arbitration proceedings and no payment due to the Agency shall be withheld on account of such proceeding under progress.

No award of the Arbitrators shall relieve the Agency of his obligations to adhere strictly to the Project Manager's instructions with regard to the works.

The Arbitrator shall give his award separately on each item with reason and costs. The award of the Arbitrators shall be final, conclusive and binding on all parties.

The Project Developer and the Agency hereby shall also agree that arbitration under this clause shall be a condition precedent before referring any disputes and differences except appointment of Arbitrator to any other authority/Courts of Law. The provisions of this clause shall survive the expiry or sooner termination of his Contract.

21.3. CONTINUATION OF WORK DURING DISPUTE

Provided always that the Project Developer shall not withhold the payment for an Interim Bill after the issuance of an Interim Certificate by the Project Manager which shall be judged on the reasonable grounds. The Agency except with the consent in writing of the Project Developer shall in any way delay the carrying out of the Works by reason of any such matters, question or dispute being referred to arbitration but shall proceed with the Work with all due diligence and shall, until completion of arbitration proceedings, relieve the Agency of his obligations to adhere strictly to the Project Developer's instructions with regard to the actual carrying out of the Works. The Work shall however be undertaken as per time scheduled, independent of such exigencies unless the Project Developer desires otherwise.

22. NO PARTNERSHIP

The Parties agree that this Agreement is on a principal-to-principal basis and does not create or constitute, a partnership, agency, trust or other similar arrangement and this Contract is not to be construed as creating any such partnership, agency, trust or other similar arrangement. Unless otherwise expressly stated in this Contract, neither party has the authority to act for, or incur any obligation on behalf of, the other party.

23. WAIVER AND EXERCISE OF RIGHTS

A waiver of a provision or of a right arising under this Contract must be given in writing signed by the party or an authorised officer of the party granting the waiver for it to constitute a valid waiver. A waiver is effective only in the specific instance and for the specific purpose for which it is given. A single or partial exercise of a right by a party does not preclude another or further exercise or attempted exercise of that right or the exercise of another right. Failure by a party to exercise or delay in exercising a right does not prevent its exercise or operate as a waiver.

24. RIGHTS CUMULATIVE

The rights, remedies and powers of the Parties under this Contract are cumulative and not exclusive of any rights, remedies or powers provided to the Parties by law.

25. DECLARATIONS AGAINST WAIVER

The condonation by the Project Developer of any breach or breaches by the Agency or a sub-Agency of any of the stipulations and conditions contained in the Contract shall in no way prejudice or affect or be construed as a waiver of the Project Developer's rights, powers and remedies under the Contract in respect of any breach or breaches aforesaid.

26. TITLE AND INTELLECTUAL PROPERTY RIGHTS

Project Developer shall retain its Intellectual Property Rights in any program, data, software, hardware or other material which constitute proprietary items of the Project Developer, and which are submitted by Project Developer to the Agency for the provision of the services under the Agreement, with respect to which no right, title or interest will be transferred or be deemed to be transferred from Project Developer to the Agency.

27. NON-ASSIGNMENT

The Agency shall itself perform its obligation under this Contract and shall not assign, transfer or sub-contract any of its rights and obligations under this Contract expect with prior written permission of Project Developer. Project Developer shall be entitled to assign/transfer its rights and benefits under this Contract.

28. NOTICES

All notices to be given pursuant to the provisions of this Contract shall be sent to the parties at the following address:

The Agency:

Tel: No:

Fax:

Email

Kind Attn:

If to Project Developer:

411, Neelkanth Towers, Bhawani Singh Marg, C-Scheme, Jaipur

Tel: No: 0141-3003497

Fax: 0141-2243060

Email:

Kind Attn:

29. LIQUIDATED DAMAGES:

Time shall be the essence of this contract. Timely completion of Projects shall be given the utmost importance and therefore levy of Penalty / Bonus and Liquidity damages shall be ensured for the project. The LD will be applicable at 0.5% of contract value per week of delay from scheduled completion date. The maximum limit of LD will be 5% of the Contract Value.

30. SITE FAMILIARITY:

It is agreed that you have understood the site and surrounding area & approaches and are aware of and have become acquainted with all the conditions thereof and have therefore taken into account all the factors into consideration and arrived at conclusion to complete the work within a stipulated target time. You have also considered the proximity of the work and therefore any work required to be carried out which is not described in the schedule of the work, to enable you to carry out the work under contract, you have deemed to have taken into consideration the cost of such incidental work and the same has been appropriately reflected in the pricing of this contract.

31. ISO FORMALITIES:

Since the company is following ISO Quality System you will ascertain from the Project in Charge and follow all the procedures / formalities / approvals etc. required to maintain the system at no extra cost to the Developer.

32. DEFAULT OF THE CONTRACTOR:

If in the opinion of the Project Manager / Developer the Contractor is in gross default for any breach or breaches in terms of this contract and the Contractor is wilfully or otherwise neglecting or unable to repair or remedy the situation satisfactorily within seven days from receipt of the notice in writing from the Project Manager / Developer, then in such a case the Project Manager / Developer, notwithstanding any previous waiver, shall appoint any other agency or agencies or employ his own workman to augment / supplement the work of the contractor to such extent as determined by the Project Manager / Developer at the entire cost of the Contractor and cause the said breaches rectified / remedied.

33. CORRECTION OF DEFECTIVE WORK:

All workmanship, materials or equipment that is unsatisfactory, faulty, and incomplete or does not conform to the contract documents, or does not meet the requirement of any inspection, test or approval will be deemed as defective. The Contractor shall promptly and in accordance with the written instructions of the Developer or his representative and within the limits stated therein, either correct such defective Work, or if it has been rejected

by the Developer remove it from the site and replace it with defect-free equivalent. The Contractor shall bear all costs for the correction or removal and replacement of defective Work and all additional direct or indirect costs the Developer may incur on account of defective Work including the costs of additional administrative, professional, consultant, inspection, testing, and other services, during the progress of the Works as well as during the guarantee period.

CONTRACT DATA

Contract Data

1. The following documents are also part of the Contract:

- The Schedule of Other Agencies working simultaneously in the area if any
- The Schedule of Key Personnel organogram to be submitted along with Bio data of Key Personnel for approval of Engineer in Charge
- The Methodology and Program of Construction
- The Schedule of Key and Critical equipment to be deployed on the work as per agreed program of construction

2. The **Developer** is:
Mahindra World City (Jaipur) Limited
Multi-Product SEZ Project Office,
Vill & PO – Kalwara,
Tehsil- Sanganer, Dist-Jaipur -302029
Phone No: 0141-3003402/ 3003411
Fax : 0141-3003474, 2243060
Authorized Representative: **HEAD (O&M)**

3. The Name of the Contract is **REQUEST FOR PROPOSAL FOR DESIGN, BUILD, SUPPLY, INSTALLATION, TESTING, COMMISSIONING, ARRANGING REQUISITE APPROVALS, OPERATING & MAINTENANCE OF ROOFTOP / GROUND MOUNTED SOLAR PHOTOVOLTAIC (PV) SYSTEM FOR "IT UGR, DTA STP, HC STP & DTA UGR" AT MAHINDRA WORLD CITY, JAIPUR (CAPEX, OPEX & OPEN ACCESS – THREE OPTIONS)** as described in detail under the caption "Scope of Work" in the Special conditions of Contract.

4. The Date of Commencement shall be the date specified in the Letter of Intent of the work.

5. The Intended Completion Date for the whole of the Works is **3 months** reckoned from the date of commencement as indicated in the letter of Intent, issued by the Developer. The work shall have the following milestones

6. Milestone dates:

Physical completion of works	Period from the date of commencement of work
Milestone 1	will be given at the time of award
Milestone 2	will be given at the time of award
Milestone 3	will be given at the time of award

7. The Agency shall submit a work schedule including the commencement date, to reflect the ground realities and adhering to the schedule of milestone indicated above. This revised work schedule shall be submitted within 10 days of delivery of the Letter of Intent.

9. The Site Possession Date shall be the date within ten days from the date of issue of letter of Intent.

10. The Site is located at **Mahindra World City (Jaipur) Limited, Multi-Product SEZ. Village: Kalwada, Tehsil: Sanganer, District: Jaipur, PIN- 302029**

11. Third party Quality Testing for whole works will be done as per Specifications and Agency/ Laboratory will be approved by MWCJ and cost of testing will be borne by Agency. Detailed test reports for carry out of work shall be submitted with each Running Account Bill.
12. Insurance requirements are as under:

Sr. No.	Policy for	Insurance cover required
1	Agency's All Risk Insurance for works	By Agency
2	Loss or damage to Developer's Equipment	By Agency, Agency shall be liable and cost to be borne by Agency
3	Other Developers property	By Agency, Agency shall be liable and cost to be borne by Agency
4	Personal injury or death insurance: a) Third Party	By Agency, Agency shall be liable and cost to be borne by Agency
	b) For Agency's Employee	By Agency, Agency shall be liable and cost to be borne by Agency. Agency should ensure such insurance is in force throughout the Contract period (Including defect liability period) and necessary proof to be submitted before the commencement of the project and at least a fortnight before the expiry of current insurance. The Agency should indemnify and include in the policy the Developer
(iii)	Motor Vehicle Insurance	By Agency as per statutory requirements, covering third Party liability.
	Third Party liability insurance (Including the name of Developer)	By Agency, Minimum cover Rs. 10 Lacs.
	Agency's Equipments (Including liability arising out of usages of such equipment)	By Agency.

13. The language of the Contract documents is English
14. The law which applies to the Contract is the laws of Republic of India
15. The currency of the Contract is Indian Rupees.
16. The proportion of payments retained (retention money) shall be 5 % from each bill to be released within 30 days after completion of defect liability period. Retention money shall be 5% of Contract Value (excl. GST) will be held on account of retention till virtual completion of work. Five percent of each running bill value (including taxes) shall be deducted on Pro-

rata basis as an interest-free Retention Money. The said retention money shall be released after successful completion of the Defects Liability Period from the date of handover of the completed works by the Contractor to the Developer.

17. The liquidated damages for the whole of the works are 0.5% of the Contract value per week or part or part thereof.

18. The maximum value of liquidated damages for the whole of the works is five percent (5%) of final Contract price.

19. Performance Bank Guarantees shall be exclusively issued by following Banks -:

- HDFC BANK LTD
- KOTAK MAHINDRA BANK LTD
- YES BANK
- AXIS BANK LTD
- STATE BANK OF INDIA

20. The Securities shall be for the following minimum amounts equivalent as a percentage of the Contract Price:

21. Performance Security shall be for 5% per cent of Contract price to be submitted prior to signing the Contract. Performance Security shall be released within 30 days after the Certified date of Completion.

22. The standard form of Performance Security acceptable to the Developer shall be an unconditional and irrevocable Bank Guarantee of the type as presented in Section 5 of the Bidding Documents and valid for one month after the issue of the completion certificate.

23. During the contract period, any kind of Bank Guarantee acceptable to the Developers shall be renewed by the Agency time to time.

24. The as-built drawings in two sets are required before issue of certificate of completion of whole or section of the work, as the case may be. Final invoice to be withheld for non-submission of as-built drawings.

25. The following events shall also be fundamental breach of Contract:

a) The Agency has contravened any Clause / sub-Clause of the General Condition of Contract.

b) The Agency does not adhere to the agreed construction program and agreed environmental management plan and also fails to take satisfactory remedial action as per Agreements.

c) The Agency fails to carry out the instructions of Engineer in Charge within a reasonable time determined by the Engineer in Charge in accordance with General Condition of Contract.

FORMS OF SECURITIES AND PROFORMAS

Forms of Securities

Acceptable forms of securities are annexed. Bidders should not complete the Performance Security forms at this time. Only the successful Bidder will be required to provide Performance Payment Securities in accordance with one of the forms, or in a similar form acceptable to the Developer.

Annex A:	Performance Bank Guarantee
Proforma-I	SUBMISSION OF RFP
Proforma-II	ACCEPTANCE OF RFP CONDITIONS
Proforma-III	DECLARATION FORM
Proforma-IV	WARRANTY FORM
Proforma-V	INTEGRITY PACT
Proforma-VI	Contact Detail of Developer representative

ANNEXURE –A

PERFORMANCE GUARANTEE

M/s. Mahindra World City (Jaipur) Limited,
411, Neelkanth Towers,
Bhawani Singh Marg,
C-Scheme, Jaipur - 302021.

This Deed of guarantee (hereinafter referred to as "**Guarantee**") made on this date ..... by ……, a scheduled bank with its head office at ……. (Hereinafter referred to as the "**Bank**") of the first part in favour of M/s. Mahindra World City (Jaipur) Limited, a Developer incorporated under Companies Act, 1956 and having its office at 411, Neelkanth Towers, Bhawani Singh Marg, C-Scheme, Jaipur - 302021. (Hereinafter referred to as "MWCJ" which expression shall, unless repugnant to the meaning and context here to include its affiliates, successors, and assigns) of the other part.

WHEREAS:

A. M/s. Mahindra World City (Jaipur) Limited is developing a special economic zone at Jaipur called "Mahindra World City, Jaipur" (hereinafter referred to as "**SEZ**").

B. On the assurance of M/s……having its office at ……

C. ……. (Hereinafter referred to "**Agency**") that they are having the necessary infrastructure and capacity to undertake construction of ……. at Mahindra World City Jaipur (Rajasthan) Solar PV package at the SEZ to the quality, specifications, and time frame as per the terms and conditions stipulated by MWCJ, MWCJ and Agency have entered into a contract ref: **MWCJL//**_____ dated ……. (Hereinafter referred to as "**Contract**" which expression shall include any agreed amendments or modifications thereto) to execute the work within the SEZ in accordance with the terms and conditions of such Contract.

D. Agency has, by its acceptance to enter into the Contract with MWCJ has agreed to furnish a bank guarantee to MWCJ to ensure timely and satisfactory performance and completion of the work as per terms of the Contract.

E. The Bank has, at the request of the Agency, agreed to grant in favour of MWCJ, a guarantee to secure performance by Agency of its obligations under the said works contract.

NOW THIS GUARANTEE WITNESSES AS FOLLOWS:

1. The Bank hereby unconditionally, unequivocally and irrevocably guarantee to MWCJ and agrees and undertakes that if in the sole and unfettered opinion of MWCJ, Agency has failed to perform its obligations under the said Contract and any amendments or modifications thereto, the Bank shall upon demand of MWCJ forthwith pay to MWCJ, without demur, contestation or dispute, without reference to Agency, the amount set forth in certificate by MWCJ as the amount of loss / claim / damage / cost / expense arising or likely to arise out of breach or non-fulfilment of the said Contract. Any such certificate or demand by MWCJ on the Bank, shall be conclusive as regards the amount due and payable by the Bank to MWCJ under this Guarantee, notwithstanding any dispute between Agency and MWCJ as to the liability for or quantum of loss / damage / claim / costs / expenses and notwithstanding any notice by Agency to the Bank withhold or not to pay any amount to MWCJ against this Guarantee either before or after invoking of this Guarantee by MWCJ Provided always the total liability of the Bank hereunder shall be limited to Rs. ……. /- (Rupees ……. Only).
2. This Guarantee of the Bank shall be effective immediately from the date hereof and shall be in force for till a certificate is issued by MWCJ to the Bank in accordance with Clause 4 of this Guarantee or the claim expiry date of this guarantee i.e., ……. whichever is earlier. If a demand issue served, before the claim expiry date, this Guarantee shall continue in full force and effect ……. in respect of the amount so demanded until the obligation of the Bank in respect hereof is finally determined and the payment made to MWCJ.
3. The Bank agrees that MWCJ has the fullest liberty, without affecting in any manner the Bank's obligations hereunder, to vary any of the terms and conditions of the said Contract, to extend the time of performance by the Agency from time to time and to forbear from enforcing any of the terms of the said Contract without any notice to or the consent of the Bank and the Bank shall not be released from its liability under this Guarantee by reason of any such variation or extension or forbearance being granted to Agency. The Bank agrees that MWCJ has no obligation whatsoever to exercise its rights against collateral, if any, of Agency but may immediately call on this Guarantee.
4. This Guarantee herein contained shall remain in valid and effect till MWCJ certify that the terms and conditions of the said Contract have been fully and properly carried out and that the Agency has fulfilled all its obligations under the Contract and that MWCJ has no claim against the Agency on any account against the said Contract or the expiry date whichever is earlier.
5. Only neglect or forbearance, on the part of MWCJ, in the enforcement of the payment of any money, the payment whereof is intended to be hereby secured or the giving of the time for the payment hereto shall in no way relieve the Bank of their liability under this Guarantee.

6. The Bank shall not revoke this Guarantee during its currency except with the previous consent in writing of MWCJ.
7. Any notice or communication under this Guarantee shall be in writing and shall be served on the Bank at its address first hereinbefore mentioned and to MWCJ at its address first hereinbefore mentioned. Either party may notify to the other in writing

any change in such address for service of notice upon it. The notices shall be served personally against acknowledgement or by email or by Registered Post.

8. This Guarantee shall not be affected by any change in the constitution of the Bank or of Agency or of MWCJ.
9. This Guarantee shall be governed by the applicable laws of India.
10. The expression “The Bank” and “the Agency” hereinbefore used shall include their respective successors and permitted assigns.

Notwithstanding anything contained herein above in the Bank Guarantee.

1- Our liability under this Bank Guarantee shall not exceed Rs. ……. /- (Rupees ……. Only) This Bank Guarantee shall be valid up to …….
2- We shall be liable to pay any amount under this Bank Guarantee or part thereof only and only if we received (if your serve upon us) a written claim or demand under this Guarantee up to ……. at …….

Proforma-I

SUBMISSION OF RFP
(On the letterhead of the Bidder)

To,
The General Manager,
Mahindra World City (Jaipur) Limited,
Jaipur

Sub: "**REQUEST FOR PROPOSAL FOR DESIGN, BUILD, SUPPLY, INSTALLATION, TESTING, COMMISSIONING, ARRANGING REQUISITE APPROVALS, OPERATING & MAINTENANCE OF ROOFTOP / GROUND MOUNTED SOLAR PHOTOVOLTAIC (PV) SYSTEM FOR "IT UGR, DTA STP, HC STP & DTA UGR" AT MAHINDRA WORLD CITY, JAIPUR (CAPEX, OPEX & OPEN ACCESS – THREE OPTIONS)"**

Dear Sir,
I/We acknowledge that MWCJ is committed to follow the principles thereof as enumerated in the Integrity Agreement enclosed with the RFP/bid document.

I/We agree that the Notice Inviting RFP is an invitation to offer made on the condition that I/We will sign the enclosed integrity Agreement, which is an integral part of RFP documents, failing which
I/We will stand disqualified from the RFP process. I/We acknowledge that THE MAKING OF THE BID SHALL BE REGARDED AS AN UNCONDITIONAL AND ABSOLUTE ACCEPTANCE of this condition of the NIT.
I/We confirm acceptance and compliance with the Integrity Agreement in letter and spirit and further agree that execution of the said Integrity Agreement shall be separate and distinct from the main contract, which will come into existence when RFP/bid is finally accepted by MWCJ. I/We acknowledge and accept the duration of the Integrity Agreement, which shall be in the line with Article 1 of the enclosed Integrity Agreement.
I/We acknowledge that in the event of my/our failure to sign and accept the Integrity Agreement, while submitting the RFP/bid, MWCJ shall have unqualified, absolute, and unfettered right to disqualify the bidder/bidder and reject the RFP/bid is accordance with terms and conditions of the RFP/bid.
Yours faithfully
(Duly authorized signatory of the Bidder)

Proforma-II

ACCEPTANCE OF RFP CONDITIONS
(On the letter head of the Bidder)
To, Dated:
_____
General Manager,
Mahindra World City (Jaipur) Limited,
Jaipur

Sir,
The RFP documents for the work of **ROOFTOP/GROUND MOUNTED SOLAR PHOTOVOLTAIC (PV) SYSTEM FOR "IT UGR, DTA STP, HC STP & DTA UGR" AT MAHINDRA WORLD CITY, JAIPUR, JAIPUR,** and I/We hereby unconditionally accept the RFP conditions and RFP documents in its entirety for the above work.

1. The contents of relevant clauses have been wherein it is clarified that after unconditionally accepting the RFP condition in its entirety, it is not permissible to put any remark(s)/condition(s) (except unconditional rebate on price, if any) in the RFP enclosed in THE BID the same has been followed in the present case. In case this provision of the RFP is found violated at any time after opening of the BID, I/we agree that the RFP shall be summarily rejected and NPCC shall, without prejudice to any other right or remedy be at liberty to forfeit the full said PERFORMANCE BG money absolutely.

2. If I/we will not fulfil the minimum qualifying criteria of the RFP I/we do not lodge any claim for opening of BID of the RFP.

Yours faithfully,
(Signature of the bidder) With rubber stamp

Proforma-III
DECLARATION FORM

To,
General Manager
Mahindra World City (Jaipur) Limited,
Jaipur

I/We have read examined the following RFP documents relating to the work of **ROOFTOP/GROUND MOUNTED SOLAR PHOTOVOLTAIC (PV) SYSTEM FOR "IT UGR, DTA STP, HC STP & DTA UGR" AT MAHINDRA WORLD CITY, JAIPUR**

a) Notice inviting RFP
b) Information & instructions for bidders
c) Warranty form
d) Criteria for Pre-qualification
e) General conditions of contract
f) Bidder's labour regulations & safety code
g) Special conditions
h) Additional conditions
i) Specifications

I/We hereby, RFP for execution of the works referred to in the documents mentioned in paragraph I above upon the terms and conditions contained or referred to in the aforesaid documents and in accordance with the specifications, and other details given therein within the period(s) of completion as given in Notice Inviting RFPs and subject to such terms and conditions as stipulated.

I/We agree to keep this RFP open for acceptance for 90days from the date of opening thereof and also agree not to make any modifications in its terms and conditions of our own accord.

I/We agree if I/We fail to keep the validity of RFP open, as aforesaid, or make any modification in the terms and conditions of my/our RFP of our own accord and/or after the acceptance of our RFP if I/We fail to commence the execution of the works, as provided in the document referred to in paragraph 1 above, I/We shall become liable for forfeiture of my/our PERFORMANCE BG money, as aforesaid, and the Corporation shall without prejudice to any other right or remedy, be at liberty to forfeit the said PERFORMANCE BG money absolutely. Should this RFP be accepted, I/We agree to

SIGN AND SEAL OF BIDDER

abide by and fulfil all the terms and conditions and provisions of the above-mentioned RFP documents.

I/We certify that the RFP submitted by me/is strictly in accordance with the terms, conditions, specifications, etc. as contained in your RFP documents, referred to in paragraph 1 above, and it is further certified that it does not contain any deviations to the aforesaid document.

Witness

Signature in the capacity of:

Duly authorized to sign the RFP

On behalf of the (in block letter)

Date
Address:

Proforma-IV

WARRANTY FORM

M/s. _____ having its registered office at _____ (hereinafter referred to as the Bidder) having carefully studied all the documents, specifications, etc. pertaining to the contract for Work of "**ROOFTOP/GROUND MOUNTED SOLAR PHOTOVOLTAIC (PV) SYSTEM FOR "IT UGR, DTA STP, HC STP & DTA UGR" AT MAHINDRA WORLD CITY, JAIPUR**."

DO HEREBY WARRANTY THAT

1. The Bidder is familiar with all the requirements of the contract.
2. The Bidder has investigated the site and satisfied himself regarding the character of the work and local conditions that may affect the work or its performance.
3. The Bidder is satisfied that the work can be performed and completed as required in the contract.
4. The Bidder accepts all risks directly or indirectly connected with the performance of the contract.
5. The Bidder has had no collusion with other Bidders, with any of the men of the Engineer-in charge or with any other person in Department executes the said works according to the terms and conditions of the contract.
6. The Bidder has not been influenced by any statement or promise of the Department of Engineer-in-charge but only the contract, documents.
7. The Bidder is financially solvent.
8. The Bidder is experienced and competent to perform the contract to the satisfaction of the Engineer-in-charge.
9. The statement submitted by the Bidder is true.
10. The bidder is familiar with all general and special laws, acts, ordinance, rules and regulations of the municipalities, district, state, and central govt. that may affect the work, its performance or personnel employed therein.

Dated For & behalf of the Bidder

Proforma-V

INTEGRITY PACT

(Rs. 100/- Stamp Paper)

Mahindra world city (Jaipur)) Limited intends to award of the "work of R**OOFTOP / GROUND MOUNTED SOLAR PHOTOVOLTAIC (PV) SYSTEM FOR "IT UGR, DTA STP, HC STP & DTA UGR" AT MAHINDRA WORLD CITY, JAIPUR**." with all relevant laws and regulations and the principles of economical use of resources and of fairness and transparency in its relation with its Bidders.
In order to achieve these goals, we, ……. hereby enter into this 'Integrity Pact' which will form a part of the bid. We, …… will not misrepresent facts or furnish false / forged documents / information in order to influence the bidding process or the execution of the contract to the detriment of MWCJ. If we, …… in any act or form, before award of the contract have committed a serious transgression through a violation or in any other form such as to put our reliability or credibility into question, MWCJ may after following due procedures also exclude us from future contract award processes and MWCJ may forfeit the EMD under the bid. We understand and agree that in the event of finding false /forged documents submitted in the bidding process at any stage, the award of contract will be terminated, and the Performance Guarantee will be forfeited as penalty for the damage caused besides resorting to other remedies under the contract.

Place: (For & on behalf of Bidder)

Date:

Witness 1:
Name & Address:
……
Witness 2: Name &Address:
…… ……
……..

Proforma-VI

All individual firms participating in this Bid are requested to furnish the following information along with the RFP.

1	Name of Bidder	
2	Head Office Address	
	Tel. No	
	Mobile no.	
	E-mail address	
3	Address on which Correspondence should be done	
	Tel. No	
	Mobile no.	
	E-mail address	
4	Specify, if the bidder is	
	a) An individual	
	b) A proprietary firm	
	c) A firm in partnership	
	d) A Limited Developer or Corporation	
5	Other details: (Copies to be enclosed)	
	a) EPF No.	
	b) PAN No.	
	c) GST registration No	
6	Give particulars of registration with Govt./ Semi Govt./ Public Sector Undertakings/Local Bodies.	

Note: Use separate sheets for providing more information if any.

Miscellaneous Annexure

List of Documents to be submitted on award of work order and with Bill submission.

One time document to be submitted at the time of issue of Work order.

1) PAN card copy
2) Valid Agencies all risk (CAR) Policy.
3) Valid Contract labour license. (Applicable if manpower exceeds 50 in nos. on any given day during project execution)
4) Valid PF registration certificate.
5) Valid ESIC registration certificate.
6) Registration in BOCW (Building and other construction workers).
7) Proprietorship PAN Declaration on your letter head. (If applicable). Format will be given by MWCJ.
8) Registration certificate if registered in MSME act (Micro, small, and medium enterprise) If not registered in MSME act provide this in writing on your letter head.
9) GSTN ID docs.
10) If not registered in GST, provide the undertaking on letter head (format will be given by MWCJ).
11) Letter of undertaking (LUT) as per GST rules and regulations if the work done is in SEZ zone.
12) Proof of address of vendor's firm.
13) Performance Security: vendor have to submit the BG for 5% of Contract Value valid upto 30 days after the date of completion of Works as performance security.
14) Bank details along with one cancelled cheque (bank detail on letter head duly signed by your bank. (Bank details as per format given by MWCJ). Payment is only done through RTGS / NEFT process here at MWCJ.

Format for Invoicing

Name and complete address of Vendor
PAN No.
GSTIN:

To,
Project Office,
Mahindra World City (Jaipur) Ltd.
PO-Mahindra World City,
Tehsil-Sanganer, Jaipur, (Rajasthan)-302037
State : Rajasthan, State code: 08
GSTIN : 08AAECM4950C2ZM for SEZ (for billing in SEZ)
GSTIN : 08AAECM4950C1ZM for DTA (for billing in DTA)

Invoice Date
Work Order No.
Invoice No.
RAB no.:

TAX-INVOICE

S.No.	Description as per work	Description as per SAC Code	HSN/SAC Code	Unit	Quantity	Rate	Amount of Work done	CGST		SGST		IGST		Total Amount
								Rate	Amount	Rate	Amount	Rate	Amount	
														0
													Total Value	-
											Total Amount Before Tax			-
											ADD CGST			-
											ADD :SGST			-
											ADD : IGST			-
											Tax Amount : GST			-
		(Rupees in Words -)									Total Amount After Tax			-

For M/s

Authorized Signatory

Note: If Invoice is for work done in SEZ, please mention below line at the bottom of Invoice.

SUPPLY MEANT FOR EXPORT/SUPPLY TO SEZ UNIT OR SEZ DEVELOPER FOR AUTHORISED OPERATIONS UNDER BOND OR LETTER OF UNDERTAKING WITHOUT PAYMENT OF INTEGRATED TAX"

REPORTING REQUIREMENTS

The following Reports and Records in two sets are to be submitted to the Engineer-in Charge of the Agency.

- Daily Labour report
- Daily work Progress report (DPR)
- Project schedule in MSP
- Method statement for every activity to be executed on site

(The Reports and Records shall have to be decided according to the nature of the Project and will be approved by the Developer)