

**TENDER FOR CIVIL, STRUCTURAL & INFRASTRUCTURE WORKS**

**FOR**

**PACK HOUSE & POTATO FLAKES UNIT  
AT MUDARDA VILLAGE,  
MEHSANA,  
GUJARAT.**

**VOLUME – 1 OF 2  
JANUARY, 2018**

**OWNER  
FANIDHAR MEGA FOOD PARK PVT LTD.  
10/11, SECOND FLOOR,  
ORCHID THE SHOPPING MALL,  
THALTEJ SHILAJ ROAD,  
THALTEJ, AHMEDABAD  
GUJARAT-380059**

**PROJECT MANAGEMENT CONSULTANT  
TECHNOPAK ADVISERS PVT. LTD.  
GURGAON**

**DESIGN CONSULTANT  
VMS ENGINEERING & DESIGN SERVICES (P) LTD.**



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## SECTION - A: INVITATION TO TENDER

- 1.0 Tenders are invited for Civil, Structural & Infrastructure works of Pack house and Potato Flakes Unit at Mudarda Village, Mehsana, Gujarat, as mentioned in Section - H "Scope of Works" for Fanidhar Mega Food Park Pvt. Ltd. ("**Owner**").
- 2.0 Tender Documents shall be download from the website [www.fmfp.co.in](http://www.fmfp.co.in). A Tender processing fee (non-refundable) of Rs 10,000 to be submitted in form of cash or DD at the time of submission of tender.
- 3.00 Tender Documents will be submitted to
- (A) Mr. Ajit Dhranga  
+91-9586432323  
E-Mail: info@fmfp.co.in

**FANIDHAR MEGA FOOD PARK PVT LTD.  
10/11, SECOND FLOOR,  
ORCHID THE SHOPPING MALL,  
OPP. THALTEJ LAKE,  
THALTEJ, AHMEDABAD  
GUJARAT-380059**

All inquiries and correspondence shall be directed in writing to the above address.

- 4.0 The tenderers should return their completed Tender in two parts – separately and distinctly marked (i) Volume – 1 of 2 (ii) Volume – 2 of 2 ("Tender"). The Tender will be received at the address given in Article 11.00 of Section B by 3.00 p.m. local time on **05.02.2018**.

**Note: Queries shall be mailed on the given Email id latest before 25<sup>th</sup> Jan 2018.**

Submission of tender:	<p>The tenderer shall submit the documents in two separate envelopes marked as</p> <p>ENVELOPE 'A' – Eligibility Documents &amp; Conditions of Contract (VOL-1), EMD &amp; CD containing the Soft copies of Eligibility Documents and other all documents except price bid AND</p> <p>ENVELOPE 'B' – Technical Specification, Price Bid &amp; CD Containing the soft copies of Price bid &amp; Technical Specification.</p> <p>2. These two envelopes shall be packed in one cover envelope addressed as under – <b>ADDRESS AS PER ABOVE</b></p> <p>3. Only the "ENVELOPE A" shall be opened first and eligibility of the tenderer shall be evaluated as per criteria defined above. "ENVELOPE B" shall be opened only for those tenderers who qualify as per the eligibility criteria.</p>
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## 5.0 ELIGIBILITY CRITERIA FOR THE TENDERERS

The tenders, who fulfill the following requirements on their own, shall only eligible for opening of Price bid. Joint Ventures are not accepted. Technical collaborations for special expertise for work is allowed. Experience in Joint venture and as sub-contractor shall not be considered.

Sr. No.	Criteria	Proof required
1	The tenderer Should be an operating profit making organization in last three financial years.	Profit & Loss statement certified by CA. (for FY 2014-15, 2015-16, 2016-17)
2	The tenderer should have completed at least one (1) similar project amounting to Rs. 5.85 crores or more in last 3 (Three) years OR Two (2) similar projects amounting to Rs. 3.66 Crores or more in last 3 (Three) years. OR Three (3) similar projects amounting to Rs. 2.20 Crores or more in last 3 (Three) years. %	Completion Certificate on client's letter head having date after 1 <sup>st</sup> April, 2014.
3	Solvency Certificate from a Nationalized Bank/ Scheduled Commercial Bank as per RBI norms (Not More than 6 months old)  OR  Equivalent Net worth certificate from CA	Rs. 2.20 Crores Solvency Certificate required          IT return for last 3 years
4	Tenderer shall furnish Work in hand project details	The tenderer shall furnish Annexures in Section C.

### Note:

- Bidder's found of furnishing misleading/ incorrect/ incomplete documents/ information as desired by Tenderer will be disqualified.
- No submissions shall be allowed once the tender documents have been submitted as per the tender submission date.

6.0 The Owner reserves the right to accept or reject any or all Tenders without giving any reasons thereof, in their sole discretion and without any liability or costs to the tenderer. The Owner clearly states that this is merely an invitation to an offer and is not an offer, and therefore makes no obligation in any way to pay any tenderer for any response or to award the tender or make any commitment to any tenderer whatsoever. The Owner may further waive any deviations which do not constitute a material modification in the Tenders received. In the event that there are any other material deviations in the Tender, the Owner may in its sole discretion reject and remove such deviations from the Tender and accept the same. The decision whether the deviation constitutes a material modification shall solely be that of the Owner and such decision shall be binding on the tenderer(s).

### 7.0 One Bid per Bidder

- a. Each bidder shall submit only one bid for one contract. A bidder who submits or participates in more than one Bid (other than as a Sub-contractor or in cases of alternatives that have been permitted or requested) shall cause all the proposals with the Bidder's participation to be disqualified.

- b. Tender documents are not transferable.

#### 8.0 Cost of bidding

The bidder shall bear all costs associated with the preparation and submission of his Bid, and the Employer shall in no case be responsible and liable for those costs.

#### 9.0 Site visit

The Bidder may visit the site and examine the Site of Works and its surroundings and obtain all information that may be necessary for preparing the Bid and entering into a contract for construction of the Works. The costs of visiting the Site shall be at the Bidder's own expense.

#### 10.0 Clarification of Bidding Document

- a. A prospective bidder requiring any clarification of the bidding documents may notify the Employer in writing by mail at the PMC's and Employer's mail address & indicated in the invitation to bid. The Employer shall respond to any request for clarification which he received earlier than 7 days prior to the deadline for submission of bids. Copies of the Employer's response shall be forwarded to all purchasers of the bidding documents, including a description of the enquiry but without identifying its source.
- b. Pre-bid meeting: The bidder or his official representative having authorization to attend, shall be invited to attend a pre-bid meeting which shall be arranged by the Employer. The purpose of meeting shall be to clarify issues, if any. The Bidder may send for points of clarifications with respect to tender, if any, by e-mail to Employer/Consultants before Pre-bid meeting. Date, time and venue shall be conveyed to the Bidder. Pre-bid meeting of this tender shall be conducted as per the schedule declared in Tender Notice. The notice of Pre Bid Meeting shall be displayed on the employer's website. Bidders are advised to check the website routinely.

#### 11.0 Amendment of Bidding Documents

- a. Before the deadline for submission of bids, the Employer may modify the bidding documents by issuing tender addends.
- b. Any addendum thus issued shall be part of the bidding documents and shall be communicated in writing through email or by fax to all the purchasers of the bidding documents. Prospective bidders shall acknowledge receipt of each addendum by fax to the Employer. Addenda shall be incorporated in the bids submitted by the Bidder



## **SECTION - B: CONDITIONS OF TENDERING**

### **1.00 Nature of Contract**

The Contract shall be fixed item rate contract.

### **2.00 Tender Documents**

The Tender Documents shall be these Conditions of Tendering, the Agreement, the General Conditions of Contract, the Special Conditions of Contract, the Specifications, the Scope of Work, the Bill of Quantities, the Drawings, Day Work Schedule, Schedule of Basic Price, the Form of Tender, Performance Bank Guarantee and any drawings and written statements required by any of the aforesaid documents to be submitted by the tenderer(s).

### **3.00 Conditions of Contract**

- .01 The General Conditions of Contract applying to these Works are generally in accordance with the "General Conditions of Building Contract", 1979 as approved (copyright) by the Indian Institute of Architects, Bombay.
- .02 Certain omissions, additions and amendments have been made herein to the conditions mentioned in 3.01 above. All tenderer(s) are advised to closely study the same to ensure that the conditions are noticed and understood.
- .03 Whole of Section D: General Conditions of Contract, and Section F: Special Conditions of Contract, shall be studied before completing the Tender for the likely impact of these conditions on the Tender to be duly filled in by the tenderer(s).

### **4.00 Contents of Tender**

The Tender submitted shall be prepared in accordance with the following requirements:

- .01 The Tender shall be submitted upon the Form of Tender provided in Section C herein and all the Tender Documents shall be deemed to form part of the Tender. The tenderer(s) shall sign the Tender Documents or if the tenderer(s) be a company, affix its common seal in the manner prescribed by its articles of association or otherwise have the Tender Documents signed appropriately and formally have the signature witnessed.
- .02 Each Tender shall contain an address for service of any notices necessary or required to be or which may be served on or given to the tenderer(s) in connection with his Tender.
- .03 Each Tender shall set forth the full name and address of the tenderer (if a person) and when the Tender is in the name of a firm, the names in full and address of each member of the firm. When the Tender is by a company there shall be set forth the name of the company and the address of the registered office of the company.
- .04 The tenderer shall put his initials on all pages of the Form of Tender.
- .05 No alterations (other than filling the blanks intended to be filled in) shall be made in the Form of Tender.
- .06 The following particulars must also accompany the Tender:

- (a) Details of works of similar type and magnitude carried out by the tenderer, in the proforma shown in Annexure-I Section C: Form of Tender.
- (b) Details of construction plant, equipments and personnel available with the tenderer for taking on this Work in the proforma shown in Annexure-II (A & B), Section C: Form of Tender.

#### **5.00 Tenderer to Inform Himself Fully**

- .01 A tenderer is required to be acquainted with all conditions relating to the Contract.
- .02 A tenderer shall be deemed to have examined carefully the Drawings, Specifications, Scope of Work, Bill of Quantities, Conditions of Tendering, General Conditions of Contract, Special Conditions of Contract and any other information made available by the Owner to the tenderer for the purposes of tendering.
- .03 **A tenderer shall be deemed to have inspected, noted and examined the Site and its surroundings and satisfied himself of physical conditions upon and below the surface of the Site, the climatic and geological conditions at the Site and the surroundings and access thereof, the nature of the work and materials necessary for the execution of Works, the means of access to the Site, the availability of labour and accommodation and to have himself obtained all necessary information as to risks, contingencies, and other circumstances which could have an effect upon his Tender and the performance of Works. Pleading ignorance of the Site conditions, its surroundings and access shall not a reason for making any claims for delays, claims, or damages at a later date.**
- .04 If a tenderer has any doubt as to the meaning of any portion of the Tender Documents, he is advised to contact Mr. Ajit (Mob - 9586432323) (Email-info@fmfp.co.in) for further clarifications.

#### **6.00 Initial Guarantee / Earnest Money / Deposit:**

- .01 Each Tender must be accompanied by an Earnest Money Deposit by draft in favour of **"Fanidhar Mega Food Park Pvt. Ltd."** payable at Ahmedabad.
- .02 The value of the Earnest Money Deposit shall be as mentioned in Section G: Appendix to General Conditions of Contract and shall be valid for a period of sixty (60) days from the date for return of Tenders. In case of the bidder revoking or cancelling his offer or varying any term and conditions in regard thereof, the Owner shall forfeit the Earnest Money Deposit.
- .03 The Earnest Money Deposit will be returned to unsuccessful tenderers upon signing of the contract with the successful tenderer or after expiration of the 60 days period specified above irrespective of the award of the Tender. A Tender processing fee (non-refundable) of Rs 10,000 to be submitted in form of cash or DD at the time of submission of tenders. No interest shall be payable on the Earnest Money Deposit.
- .04 The Earnest Money Deposit for the successful tenderer shall be return after signing the contract.
- .05 The Earnest Money Deposit of the successful tenderer shall be returned on submission of a Performance Bank Guarantee (from a nationalized bank approved by the Owner) equivalent to 5% of the Contract Sum. The Performance Bank Guarantee shall be provided by the successful tenderer within three (3) weeks of receipt by the tenderer of

the letter of acceptance of Tender. The validity of this Performance Bank Guarantee shall be till the end of three (3) months beyond the expiry of the Defects Liability Period referred to in Section G: Appendix to General Conditions of Contract.

.06 The EMD may be forfeited

- (i) If the Bidder withdraws the Bid after Bid opening during the period of Bid validity.
- (ii) If the Bidder does not accept the correction of the Bid Price
- (iii) In the case of a successful Bidder, if the Bidder fails within the specified time limit to Sign the Agreement or Furnish the required Performance Bank Guarantee

## **7.00 Cost of Tendering**

The Owner shall not be responsible for, nor pay for, any expenses or loss which may be incurred by any tenderer in the preparation and submission of this Tender.

## **8.00 Tenderer(s) to have Executed Works of Similar Character and Magnitude**

The tenderer shall submit with their Tender Documents evidence that they have carried out works of approximately the same character and magnitude as those now proposed herein, in order that the Owner may be satisfied that the persons tendering are technically and financially capable of executing the proposed Works. Such documents shall give the name and nature of the works executed, for whom constructed, the site, the value of contract, date of commencement and date of completion. A Tender which is not accompanied by such documents will not be considered.

## **9.00 Information Supplied Not Binding**

.01 Neither the Engineer nor the Owner nor any of their respective employees has any authority to make any representation or explanation to persons tendering as to the meaning of the Contract or other documents, or as to anything to be done or not to be done by the successful tenderer, or as to these conditions, or as to any other matter or thing so as to bind the Owner or bind or fetter the judgment of the Engineer in the exercise of their powers and duties under the Contract, unless such representation or explanation has been made in writing and is incorporated in the Agreement when the same is signed.

.02 No claim for increase of the rates shown in the Bill of Quantities or other rates to be determined as per the Contract will be entertained, nor shall the successful tenderer be entitled to make any claim on the ground that he was supplied with information or given any promise or guarantee by the Owner or by the Engineer or their employees.

.03 Special attention of the tenderer is drawn to the alternative items in the schedule of probable quantities. The rates and amounts, if any, for these alternative items shall be filled in the schedule of probable quantities. A Tender is liable for rejection; inter alia, if rates are not given for these alternative items. The Owner / Engineer reserves for himself the right to adopt any of the alternative items, either in scrutinizing and deciding upon the Tender or during the Contract Period.

## **10.00 Conditions of Labour**

The tenderer is required to fully acquaint himself with all regulations, rules etc. concerning conditions and terms of employment of labour or any other class of employment as may become applicable and shall comply with the same.

## **11.00 Submission Of Tenders**

- .01 Tenders shall be enclosed in two separate sealed envelopes (Volume- 1 of 2 and Volume – 2 of 2) addressed to **FANIDHAR MEGA FOOD PARK PVT LTD. 10/11, SECOND FLOOR, ORCHID THE SHOPPING MALL, OPP. THALTEJ LAKE, THALTEJ, AHMEDABAD, GUJARAT-380059** and such envelopes to be legibly endorsed thereon with the Tender number and the title of the project.
- .02 Any Tender not delivered on the date and time mentioned in the notice of invitation to the tenderer shall not be accepted and considered unless there is evidence to the sole and complete satisfaction of the Owner that such Tender was posted to reach the above address under normal circumstance before the specified closing time and date but was still in the course of postal delivery at that time.
- .03 No Tender received by telephone or telegraphic device shall be accepted and considered.

## **12.00 Validity Of Tender**

The Tender shall remain valid for acceptance for a period of 60 days from the date of opening of the Tender.

## **13.00 Informal Tenders**

A Tender which does not comply with the requirements of the Tender Documents or which contains provisions not required by the Tender Documents may be rejected. A Tender must comply with all the terms and conditions of the Tender Documents.

## **14.00 Acceptance Of Tenders**

- .01 The Owner reserves to the right to award the tender to any eligible party.
- .02 A Tender shall be deemed to be accepted by the Owner when a notice of such acceptance in writing is handed over to the tenderer or is posted to him at the address furnished by him pursuant to Article 4.02 above. The tenderer would then be bound to accept and take over the Site and commence work within 10 days of such notification of acceptance by the Owner.
- .03 On acceptance of the Tender, the tenderer shall execute an Agreement in the form appearing in Section I.
- .04 Within 7 days of receipt of the letter of acceptance of the Tender, the tenderer shall at his own expense obtain the Performance Bank Guarantee (from a nationalized Bank approved by the Owner) for a sum of 5% of the Contract Sum for the due performance of the Contract in the format appearing in Section E herein.  
On providing the aforesaid Performance Bank Guarantee in the manner stipulated above, the Earnest Money Deposit shall be returned to the successful tenderer.
- .05 If the tenderer fails to comply with the preceding paragraph, the Owner in addition and without prejudice to any other rights or remedies, may by notice in writing to the tenderer rescind the acceptance of the Tender.

## **15.00 Description Of Works**

For the description of Works the tenderer(s) are advised to refer to Section - H Scope of Work herein.

**16.00 Short listing of Eligible Bids:**

The bids shall be evaluated for technical capability first. An empowered Tender Committee shall evaluate the qualification criteria based on internally decided scoring pattern and shall shortlist contractors based on the information and supporting evidence provided

**17.00 Evaluation of Bids.**

- a. The contractor shall be shortlisted on the basis of their technical bid.
- b. The Employer shall open, evaluate and compare the financial Bids only from shortlisted proposals (based on their technical evaluation) and take their decision for award of work. The process of Evaluation shall not be disclosed to any Bidder or others.
- c. Shortlisted contractor shall be invited for negotiations by the employer.
- d. The Employer 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 Employer shall not be taken into account in Bid evaluation

## SECTION - C: FORM OF TENDER

Ref. Letter :  
Contractor :  
Date :

### OWNER

**Fanidhar Mega Food Park Pvt. Ltd.**  
**10/11, Second Floor,**  
**Orchid the Shopping Mall,**  
**Opp. Thaltej Lake,**  
**Thaltej, Ahmedabad**  
**Gujarat-380059**

Tender for Civil, Structural and Infrastructure works for Pack house and Potato flakes unit at Mudarda Village, Mehsana, Gujarat for Fanidhar Mega Food Park Ltd.

- 1.00 Having examined all the terms and conditions of the Tender, including the Drawings, General Conditions of Contract, Special Conditions of Contract, Scope of Work, Specifications, Bill of Quantities, Day Work Schedule and Schedule of Basic Price for the Works, and having obtained all the information affecting this Tender, we, the undersigned offer to execute, complete and maintain the whole of the said Works in conformity with the said Drawings, General Conditions of Contract, Special Conditions of Contract, Scope of Work, Specifications, Bill of Quantities, Day Work Schedule, Performance Bank Guarantee and Schedule of Basic Price for the Contract Sum of Rs. \_\_\_\_\_ (Rupees \_\_\_\_\_ only).
- 2.0 We undertake and agree that if our Tender is accepted, to commence the Works within 10 days of receipt of the letter of acceptance from you and to complete and deliver the whole of the Works comprised in the Contract within the time stipulated in Section G: Appendix to General Conditions of Contract. In case of our failure to complete the Works in accordance with the timelines specified in Section G: Appendix to General Conditions of Contract, we shall pay you liquidated damages calculated at the rate stated in Section G: Appendix to General Conditions of Contract, as a genuine pre-estimate of damages (and not as penalty) up to a limit of 5% of the Contract Sum. We understand that time shall remain the essence of the Contract.
- 3.00 If our Tender is accepted, within 7 days from the receipt of the letter of acceptance, we will at our own expense obtain the Performance Bank Guarantee from a nationalized Bank (as approved by you)] for a sum not exceeding 5% (Five) percent of the abovementioned Contract Sum in the format provided in Schedule E hereof.
- 4.00 We agree to abide by the Tender for the period of 60 (Sixty) days from the date fixed for return of Tenders and it shall remain binding upon us and may be accepted by you at any time before the expiration of that period.
- 5.00 We understand that you are not bound to accept the lowest or any Tender you may receive and you may reject our Tender without assigning any reasons thereof and without any liability to pay anything to us.

Dated this .....day of..... 2018

Signature ..... in the capacity of.....

duly authorized to sign Tenders for and on behalf of.....  
.....

(In Block Capitals)

Witness.....

Name.....

(In Block Capitals)

Address.....

Occupation.....









**Annexure – V: Major Milestones for works to be achieved in the project**

The major milestones are mentioned herewith as part of the Tender Document and shall form an integral part of the Contract. Tenderer(s) are requested to study the same carefully and accordingly include in their quoted rates/values the necessary resources, men materials and supervisory staff required to meet the project milestones.

Time period to complete all the Works covered within the Scope of this Contract shall be **40 Weeks** from the date of issuing the Letter of Intent (LOI).

Specific milestones shall be as given below –

<b>Sr.</b>	<b>Milestone</b>	<b>Duration</b>
1	Site Mobilization	1 <sup>st</sup> to 2 <sup>nd</sup> Week
2	Completion Foundation Works and Pedestal for further execution work of PEB Structures	3 <sup>rd</sup> to 15 <sup>th</sup> Week
3	Completion of Flooring Works for Main Plant Building	16 <sup>th</sup> Week to 25 <sup>th</sup> Week
4	All External and Internal Balance Civil Works complete in all respect with handing over to client. Completion of all works covered under this Contract	26 <sup>th</sup> Week to 40 <sup>th</sup> Week

**Note:** Tenderer needs to submit the detailed Project schedule.

**IMPORTANT NOTE:**

**IF THERE IS ANY DELAY ON THE ABOVE MILESTONE, LIQUIDATED DAMAGES OF 1% OF THE TOTAL PROJECT COST PER WEEK (NOT EXCEEDING 5% OF THE PROJECT COST) WILL BE LEVIED. UP ON HITTING THE CAP OF 5% OF PROJECT COST, THE OWNER SHALL HAVE RIGHT TO TERMINATE THE CONTRACT AND GET WORK DONE THROUGH A THIRD PARTY AT THE COST AND EXPENSE OF THE CONTRACTOR.**

Name (in BLOCK CAPITALS): .....

Signature: ..... Date: .....

For and on behalf of Contractor (in BLOCK CAPITALS): .....

## Annexure – VI: Site Inspection Declaration

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We hereby certify that we have visited the Site and the surrounding areas thereto and fully understand the extent, character and access to the operations described in the Tender Documents and are fully aware of the nature of the Site. We further declare that we shall not plead ignorance of the Site condition or access thereto at a later date nor shall such a plea of ignorance of the Site conditions, its surrounding and access be a reason for making any claims for delays, claims, or damages.

Date of Visit: .....

Name (in BLOCK CAPITALS): .....

Signature: ..... Date: .....

For and on behalf of  
Contractor (in BLOCK CAPITALS): .....

## **Annexure – VII: Addresses for Sending Notice**

### **OWNER**

**Fanidhar Mega Food Park Pvt. Ltd.  
10/11, Second Floor,  
Orchid the Shopping Mall,  
Opp. Thaltej Lake,  
Thaltej, Ahmedabad  
Gujarat-380059**

### **DESIGN CONSULTANT**

**VMS ENGINEERING & DESIGN SERVICES PVT. LTD.  
Chitrakoot Flats, Ground Floor,  
B/H Times of India, Ashram Road,  
Ahmedabad – 380 009, Gujarat**

### **PMC CONSULTANT**

**TECHNOPAK ADVISERS PVT. LTD.  
GURGAON**

### **CONTRACTOR**

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## SECTION - D: GENERAL CONDITIONS OF CONTRACT

### 1. Definitions

In the Contract, as hereinafter defined, the following words and expressions shall have the meanings hereby assigned to them, except where the context otherwise requires:

- I. "Agreement" shall mean the agreement signed between the Owner and the Contractor in the form provided in Section I hereof and all Contract Documents (as defined below) shall be deemed to be part of the Agreement and Articles of Agreement to be construed accordingly.
- II. "Approved" shall mean approval in writing including subsequent written confirmation of previous verbal approval.
- III. "Architect / Design Consultant" shall mean VMS Engineering & Design Services (P) Ltd. or such other entity as may be appointed by the Owner from time to time.
- IV. "Bill of Quantities" shall mean the bill of quantities included in Section KB (Bill of Quantities) of Volume 2 of the Contract for the Works.
- V. "Certificate of Completion" shall mean the certificate(s) to be issued according to Article 31(5) of Section D hereof.
- VI. "Clerk of work" shall mean representative of Fanidhar Mega Food Park Pvt. Ltd.
- VII. "Conditions" shall mean General Conditions of Contract or Special Conditions of Contract or both.
- VIII. "Contract" or "Contract Document" shall include the documents specified in Article 2 herein and shall include the Conditions of Tendering, Form of Tender, Agreement, the General Conditions of the Contract, Special Conditions of the Contract, Specifications, Scope of Work, Bill of Quantities, Drawings, Day Work Schedule, Schedule of Basic Price and Performance Bank Guarantee including all modifications thereof. For avoidance of any doubt, "Contract" or "Contract Document" shall include both Volume 1 and Volume 2 of the Contract for the Works and Contract Document will be deemed to be a part of the Agreement.
- IX. "Contractor" shall mean \_\_\_\_\_.
- X. "Contract Sum" shall have the meaning as set forth in Article 6 hereof.
- XI. "Contract Bills" shall have the meaning as set forth in Article 7 hereof.
- XII. "Contractor's Rate" shall mean the rates quoted by the Contractor in Section KB of Volume 2 of the Contract for the Works.
- XIII. "Contract Period" shall mean ninety (90) days from the Date of Commencement. The time limits stated in the Contract Document are of the essence of the Contract.
- XIV. "Construction Equipment" shall mean all appliances/equipment and things of whatsoever nature required including all related spares or wearing parts, in or about the execution, completion or maintenance of the Works but does not include materials or other things intended to form part of or to be incorporated into the Permanent Works.

- XV. "Cost" shall be deemed to include overhead costs whether incurred on or off the Site.
- XVI. "Day" shall mean a calendar day.
- XVII. "Day Work Schedule" shall mean the schedule described in Section L hereof.
- XVIII. "Date of Virtual Completion" of a project of specified area of a project is the date when, in the opinion of the Engineer, the construction is sufficiently completed, in accordance with the Contract Documents as modified by any change or variation orders agreed to by the Parties in writing, so that the Owner can occupy the project for the use it was intended.
- XIX. "Defects Liability Period" shall have the meaning as set forth in Section G hereof.
- XX. "Drawings" shall include maps, plans, sketches and tracings or prints thereto referred to and incorporated in the Contract and modifications of such drawings approved in writing by the Owner/Engineer-in-Charge and such other drawings as may from time to time be approved in writing by the Owner/Engineer-in-Charge in connection with the execution of the Contract.
- XXI. "Effective Date or Date of Commencement" shall have the meaning as provided in Section G hereof.
- XXII. "Engineer/ Engineer-in-charge" shall mean the representative of Fanidhar Mega Food Park Pvt. Ltd. Or their nominated representative/ agencies.
- XXIII. "PMC" shall mean **Technopak Advisors Pvt. Ltd. Gurgaon.**
- XXIV. "Final Acceptance Certificate" shall mean the certificate(s) to be issued according to the provisions hereof.
- XXV. "Final Payment" shall mean payment as stated in Article 31.(6) of Section D hereof.
- XXVI. "INR" shall mean Indian Rupee.
- XXVII. "Milestones" shall mean the milestones along with their dates more specifically described in Annexure IV hereof.
- XXVIII. "Month" shall mean a calendar month.
- XXIX. "Owner" shall mean Fanidhar Mega Food Park Pvt. Ltd. (SPV)
- XXX. "Parties" shall mean the Owner and the Contractor stated herein.
- XXXI. "Project" shall mean Proposed Pack house and Potato flakes unit for Civil, Structural, Infrastructure works at Mudarda Village, Mehsana, Gujarat, as further described in the Conditions, Specifications & Drawings, and Bill of Quantity & Preamble, which the Contractor has to execute pursuant to the provisions of the Contract.
- XXXII. "Site" shall mean the site of the Works being Mudarda Village, Mehsana, Gujarat including any building and erections thereon and any other land allotted by the Owner for Contractor's use.
- XXXIII. "Scope of Work" shall mean the scope of work to be executed under the Contract and as broadly defined in Section H.

- XXXIV. "Sub-contractor" or "Subcontractor" shall mean sub-contractors having a direct contract with the Contractor and it includes those who furnish material worked to a special design according to the plans or specifications of the work but does not include one who merely furnishes material not so worked. Anyone doing work on a piece rate basis for the Contractor shall be deemed a Subcontractor.
- XXXV. "Schedule of Basic Price" shall mean the prices mentioned in Section KA-preamble in Volume 2
- XXXVI. "Site- in –charge" shall mean the engineer of the Contractor.
- XXXVII. "Specifications" shall mean the item specifications as well as general workmanship specifications (Section J of Volume 2) as well as specifications on the Drawings.
- XXXVIII. "Week" shall mean seven consecutive days.
- XXXIX. "Written Notice" shall mean any notice in written, typed or printed characters, sent (unless delivered personally and proved to have been received) by registered post to the address mentioned in Appendix VI and shall be deemed to have been received when in the ordinary course of post it would have been delivered.
- XL. "Work", shall in relation to the Project, mean and include all works specified or put forth and required in the Scope of Work, Specifications, Drawings and Schedules hereto annexed or referred to or to be implied there from or incidental thereto or to be hereafter specified or required in such explanatory instructions and drawings as shall from time to time during the progress of the work hereby contracted be supplied by the Owner and to be supplied and executed by the Contractor or Sub-Contractor. The said work includes labour or material or both.
- XLI. "Year" shall mean 365 days.

## **2. Contract Document**

2. The following documents, including all modifications thereof, shall constitute the Contract Document:

Conditions of Tendering  
Form of Tender  
Articles of Agreement  
General and Special Conditions of Contract  
Specifications  
Scope of Work  
Bills of Quantities  
Drawings  
Day Work Schedule  
Schedule of Basic Price  
Performance Bank Guarantee  
as contained in Volume 1 and Volume 2

The Contract Documents should be read harmoniously. What is called for in any one shall be as binding as if called for by all.

The Contract Document shall remain in the custody of the Engineer so as to be available at all reasonable times for the inspection of the Owner or of the Contractor. Immediately



after the execution of the Agreement, one copy of the Contract Document shall, without charge, be supplied by the Engineer to the Contractor

After the execution of the Agreement, the Contractor shall without charge be supplied with all such further drawings and details as may be prepared by the Engineer, from time to time as the work proceeds, as are reasonably necessary either to explain or amplify the Contract Drawings or to enable the Contractor to carry out and complete the Works in accordance with the terms and conditions set forth herein.

The Contractor shall keep one copy of the Specifications, Day Work Schedule or other like document referred to in this Article and one copy of the Contract Drawings and such other drawings and details supplied to him from time to time and referred to in this Article and written instructions referred to in this Article and in sub Article 9, 16(1), 16(2) and 30 at the Site so as to be available to the Engineer or Site –in-Charge at reasonable times.

None of the documents referred to in this Article shall be used by the Contractor for any purpose other than this Contract.

Upon Final Payment, the Contractor shall forthwith return to the Engineer all Drawings, Specifications, Schedules and other document of like nature which bears the Owner's name and/or that of the Engineer.

The Owner and the Contractor shall keep confidential and shall not, without the written consent of the other Party hereto, divulge to any third party any documents, data or other information furnished directly or indirectly by the other Party hereto in connection with the Contract, whether such information has been furnished prior to, during or following termination of the Contract. Notwithstanding the foregoing, the Parties shall not be required to obtain written consent of the other Party if such document, data or information is required to be disclosed to a regulatory or statutory authority as mandated under applicable law. Further, the Contractor may furnish to its Subcontractor(s) such documents, data and other information it receives from the Owner to the extent required for the Subcontractor(s) to perform its work under the Contract, in which event the Contractor shall obtain from such Subcontractor(s) an undertaking of confidentiality similar to that imposed on the Contractor under this General Conditions of Contract.

Wherever it is mentioned in the Contract that the Contractor shall perform certain Work or provide certain facilities, it is understood that the Contractor shall do so at his cost and the Contract Sum shall be deemed to have included the cost of such performances and provisions so mentioned.

### **3. Type Of Contract**

3. The Contract shall be fixed item rate contract. The Contractor shall be paid for the actual quantity of work done as per the Drawings, and measured at the Site if required, at the rates quoted by him in the Contract bills.

Contractors Rates shall remain unchanged although the actual quantities may be different from those shown in the Bill of Quantities. The quoted item rates shall be inclusive of all the liabilities / responsibilities of the Contractor relating to contract labour laws / Insurance / provident funds and any statutory liability and no variation in prices will be affected for that purpose. Any rise in the quoted item rates due to escalation in cost of materials, labour shall have to be borne by the Contractor and the rates shall not be subject to any change whatsoever. The rates quoted are inclusive of all applicable, transportation, insurance and workman's compensation.

The basis of price is firm and free from any kind of escalation including statutory levies throughout the validity of the Contract. No escalation towards any variation in cost of labour, plant & machinery, currency fluctuations, petroleum products, electricity, transportation, will be considered during the validity of the Contract. The rates quoted are exclusive of all applicable taxes, duties, levies.

The unit rates will be valid for the period defined in the LOI/PO/Work order from the date of the work order including the period of extended time and till the date of completion. The unit rates must be firm and should include the basic cost of materials, their transportation to the site, loading/un-loading, labour charges, wastage, insurance and all costs of fixing or placing in position for which the item of work is intended to be operated. The rates quoted by the Contractor shall be firm throughout the contract period and there shall be no upward revision of the rates quoted by the Contractor, for any reason whatsoever.

**NOTE: Goods & Service Tax (GST) should be included in Price Summary (Section KC of Volume - 2) as a separate amount.**

No extra claim/compensation shall be made or entertained for idle time.

The rates agreed in Schedule of rates shall cover for all charges and expenses.

Quantities mentioned in the Bill of Quantities are indicative ones, which have been estimated based on assumed details. The Contractor must verify & workout the actual requirements based on the construction drawings which shall be issued to the Contractor before ordering of materials and / or starting the job and the Owner / Engineer shall not be responsible for delay in completion and any extra cost to the Contractor due to shortfall or excess purchases done by the Contractor.

#### **4 Bill Of Quantities**

##### **Procurement of materials based on drawings and not Bill of Quantities**

4. The Bill of Quantities given in the Contract Bill is provisional and is meant to indicate the intent of the work and to provide a uniform basis for tendering. The Owner reserves the right to increase or decrease any of the quantities or to totally omit any item of work and the Contractor shall not claim any extra monies or damages on the ground of increase or decrease of any quantities.

Any material, which is procured on the basis of Bill of Quantities but not required as per drawings / details issued for execution, shall not be considered for payment. For any reason, if the Contractor plans to procure certain materials / items only on the basis of Bills of Quantities, prior approval of the Engineer in writing shall be obtained.

Any error in description or in quantity or omission of items from the Contract Bill shall not vitiate this Contract but shall be treated as a variation.

#### **5. Drawings**

##### **5.(1) Tender Drawings**

Tender drawings describe the general nature of Works. However, there may be substantial variation in these and detailed execution drawings issued to the Contractor from time to time. Such variations shall not vitiate the Contract and the Contractor shall be required to incorporate such variations in the Work.

5.(2) Further Drawings and Instructions

The Engineer shall have full power and authority to supply to the Contractor from time to time, during the progress of the Works, such further drawings and instructions as shall be necessary for the purpose of the proper and adequate execution and maintenance of the Works. The Contractor shall be bound to carry out the Works according to such Drawings and instructions issued under this Article 5. (2) without any extra claims for damages.

5.(3) Disruption of Progress

The Contractor shall give written notice to the Engineer whenever planning or progress of the Works is likely to be delayed or disrupted unless any other drawing or order, including a direction, instruction or approval, is issued by the Engineer within a reasonable time. The notice shall include details of the drawings or order required and the details of why and by when it is required and the delay or disruption likely to be suffered if it is late.

5.(4) Contract Drawings

5.(4)A In general the Drawings shall indicate dimensions, position and type of construction; the Specifications shall indicate the qualities and the methods; and the Bill of Quantities shall indicate the quantum and the rate for each item of Work. Any Work indicated on the Drawings and not mentioned in the Specifications or vice versa shall be deemed as though fully set forth in both. Work not specifically detailed, called for, marked or specified, shall be the same as similar parts that are detailed, marked or specified.

All weights and measures, computations, computer programmes, plans, schedules, notes and drawings shall utilize the international metric system.

5.(4)B The Contractor's Work shall not deviate from the Drawings and the Specifications. The Engineer's interpretation of these documents shall be final and binding upon the Contractor.

5.(4)C Errors or inconsistencies discovered in the Drawings and Specifications shall be promptly brought to the attention of the Engineer, through the Site-In-Charge for interpretation or correction. Local conditions, which may affect the work, shall likewise be brought to the Engineer's attention. If at any time, it is discovered that work, is being done is not in accordance with the Contract Drawings and Specifications, the Contractor shall correct the work immediately. Corrections of defective work shall not be a basis for any claim for extension of time and or extra payment. The Contractor shall not carry on work except with the knowledge of the Clerk – of - Works.

5.(4)D Figured dimensions on the Scale Drawings and large size details shall govern. Large size details shall take precedence over small scale drawings. Any work done before receipt of such large size details, if not in accordance with the same, shall be removed and replaced or adjusted by the Contractor at its cost and as per direction of the Engineer without expense to the Owner. The General Conditions apply with equal force to all the Work including authorized extra Works.

5.(4)E All Drawings, Bills of Quantities and Specifications and copies thereof furnished by the Engineer are the property of the Owner. They shall not be used on any other work and shall be returned to the Engineer at his request on completion or termination of the Contract.

5.(4)F Reinforcing steel bar bending schedules shall if requested by the Engineer be furnished to the Engineer at least fifteen days prior to the fabrication of the reinforcement.

## **6. Contract Sum**

The Parties agree that the Contract Sum shall be Rs. \_\_\_\_\_ (Rupees \_\_\_\_\_). The Contract Sum shall not be adjusted or altered in any way whatsoever otherwise than in accordance with the express provisions of the terms and conditions of this Tender. Any error whether of arithmetic or not in the computation of the Contract Sum shall be deemed to have been accepted by the Parties hereto.

## **7. Contract Bills**

7.(1) The quality and quantity of the work included in the Contract Sum shall be deemed to be that which is set out in the Contract Bills. Nothing contained in the Contract Bill shall override, modify or affect in any way whatsoever the application or interpretation of that which is contained in these conditions.

7.(2) Any error in description or in quantity or omission of items from the Contract Bills shall not vitiate this Contract but shall be corrected and deemed to be a variation required by the Engineer.

## **8. Scope And Intent**

8.(1) Scope: The general character and the Scope of Work is illustrated and defined by the Specifications and the Bills of Quantities herewith attached and by the Drawings. If the Contractor shall find any discrepancy in or divergence between the Contract Drawing and/or the Contract Bills he shall immediately give to the Engineer a written notice specifying the discrepancy or divergence and the Engineer shall issue instruction in regard thereto.

8.(2) Extent: The Contractor shall carry out and complete the Work in every respect in accordance with this Contract and with the direction of, and to the complete satisfaction of the Engineer. The Engineer may in his absolute discretion and from time to time issue further Drawings, details and/or written instructions, written directions and written explanations all of which are collectively referred to as Engineer's instructions.

8.(3) Intent: The intention of the Document is to include all labour and materials, Equipment and transportation necessary for the proper execution of the Work.

## **9. Engineer's Instructions**

9.(1) The Contractor shall forthwith comply with and duly execute any Work comprised in such instructions issued to him by the Engineer in regard to any matter in respect of which the Engineer is expressly empowered by these Conditions to issue instructions provided always that verbal instructions, directions and explanations given by the Engineer to the Contractor or his Engineer-in-Charge, Site-in-Charge or any other employee of the Contractor, shall if involving a variation, be confirmed in writing.

If within seven days after receipt of a written notice from the Engineer, requiring compliance with an instruction and the Contractor does not comply herewith, then the

Owner may employ and pay other persons to execute the Work, whatsoever, which may be necessary to give effect to such instructions and all cost incurred with such employment, shall be recoverable from the Contractor by the Owner as debt, or, may be deducted by him from any monies due or to become due to the Contractor under this Contract.

- 9.(2) Upon receipt of instruction issued to him by the Engineer, the Contractor may request the Engineer to specify in writing the provision of these conditions which empowers the issuance of the said instruction. The Engineer shall forthwith comply with any such request, and if the Contractor shall thereafter comply with the said instructions given in writing consequent to the requests and the issuance of the same shall be deemed for all purposes of this Contract to have been empowered by the provision of these Conditions specified by the Engineer in answer to the Contractor's request.
- 9.(3) All instructions issued by the Engineer shall be in writing. Any instruction issued orally shall be of immediate effect, but shall be confirmed in writing by the Contractor to the Engineer within seven days, and if not dissented from in writing by the Engineer to the Contractor within seven days from receipt of the Contractor's confirmation, shall take effect as from the expiration of the latter said seven days.

Provided always:

That if the Engineer within seven days of giving such an oral instruction, himself confirms the same in writing, the said instruction shall take effect as from the date of the Engineer's written confirmation.

## **10. Facilities And Co-Operation**

10. The Contractor shall provide necessary facilities and co-operation for any Subcontractor supplier who may be approved by the Owner. The Contractor shall do all cutting, filling or patching of Works that may be required to make its several parts come together properly and fit it to receive or be received by work of other Contractors shown upon or reasonably implied by the Drawings and Specifications for the completed structure, and he shall make good after them as the Engineer may direct. Any cost caused by the defective or ill-timed work shall be borne by the party responsible therefore.

The Contractor shall not endanger any work by cutting, excavating or otherwise altering the work and shall not cut or alter the work of any other Contractor save with the written consent of the Engineer.

## **11. Setting Out**

11. The Engineer shall determine any lines levels which may be required for the execution of the Work and shall furnish to the Contractor by way of accurately dimensioned drawings such information as shall enable the Contractor to set out the Work at ground level.

The Contractor shall set out and level the work and shall be responsible for the accuracy of the same. He shall provide all the instruments and attendance required by the Engineer for checking the Work. He shall entirely at his own cost amend to the satisfaction of the Engineer any error found at any stage which may arise through inaccurate setting.

## **12. Site**

12.(1)Visit : Before tendering, the Contractor shall have visited and examined the Site and satisfied himself as to the nature of the existing roads or other means of communication and logistics and the character of the soil and of the excavations, the correct dimensions of the Work and the facilities for obtaining any special articles called for in the Contract Document and shall have obtained generally his own information on all matters affecting the continuation and progress of the Works.

No extra charge made in consequence of any misunderstanding or incorrect information on any of these points, or on the grounds of insufficient description, will be claimable by the Contractor, nor shall the Owner be under any obligation to pay the same.. Should the Contractor after visiting the Site, find any discrepancies, omissions, ambiguities or conflicts in or among the Contract Document, or to be in doubt as to their meaning, he shall bring the questions to the Engineer's attention, not later than seven days before the last date for submission of the tender. No claim whatsoever on account of a plea of ignorance of the Site condition or access there to shall be admissible under this contract, nor shall the Contractor be entitled to raise such a plea.

12.(2)Admittance : The Contractor shall be allowed full access to the Site on the 'Date of Commencement' stated in the Appendix to General Conditions of Contract (Section G) and he shall thereupon and forthwith begin the work and shall regularly proceed with and complete the same on or before the 'Date of Completion' stated in the same Appendix nevertheless subject to the provision for extension of time hereafter contained.

12.(3)Treasures : For the purpose of this Contract any treasures, Coins, archaeological objects or sites, or objects of Antiquity, which may be found at Site shall be the sole property of the Owner and the Owner forthwith notified of the same and further the same shall be promptly handed over to the Owner. If the Contractor fails to hand over such treasures, coins, archaeological objects or sites, or objects of Antiquity, or bring them to the notice of the owner the contractor would have deemed to have inter alia, misappropriated the same and the Owner or its nominee shall be entitled to bring any action including any criminal proceedings against the Contractor.

#### 12.(4) Use of Site

In particular the following provisions shall be deemed to apply to the use of the Site:

12.(4)A The lands and other places outside the Site which are the property of or under the control of the Owner shall be used strictly in accordance with the instructions of the Engineer or Clerk of Works.

12.(4)B The Contractor shall at his own cost, at any time promptly move any vehicle, machine, vessel or any other obstruction within his control that may be required by the Clerk of Works to be moved on instructions being given and unless the Clerk of Works decides otherwise.

12.(4)C The Contractor shall maintain access for the inspection, operation and maintenance of any of the plant or the Works belonging to the Owner which lie within the Site or elsewhere.

- 12.(4)D The Contractor shall not use any portion of the Site for any purpose except for execution of the Works unless prior written permission of the Clerk of Works has been obtained.

### **13. Samples And Shop Drawings**

- 13.(1) After the award of the Contract, the Contractor shall furnish for the approval of the Engineer, with such promptness as to cause no delay in his work or in that of any other Subcontractor, samples and shop drawings required by the Engineer. Samples shall be delivered as directed by the Engineer. The shop/fabrication drawings shall be prepared by the Contractor at his own cost and got approved by the Engineer.
- 13.(2) A schedule giving dates for the submission of samples and shop drawings shall be included in the Program described under Article 14. Unless specifically authorized all samples and shop drawings must be submitted for approval within thirty days of signing the Contract and not less than sixty days before the date the particular work involved is scheduled to begin.
- 13.(3) The Engineer shall check and approve such samples and shop drawings, with reasonable promptness only for conformity with the design concept of the Project and for compliance with the information in the Contract Documents. The Work shall be in accordance with the approved samples and shop drawings.
- 13.(4) All samples for testing of sand, aggregate, cement, reinforcing bars, concrete blocks, timber and other materials used in construction of the buildings and services shall be supplied by the Contractor at his own cost, if the material/product is to be supplied by him. If the Owner has supplied the material/product the cost of samples shall be borne by Owner.
- 13.(5) The Contractor shall submit to the Engineer samples of materials/products for approval sufficiently in advance of incorporating the same in the Works.
- 13.(6) The Contractor shall inform the Owner, requirement of all materials to be supplied by the Owner one month in advance before actual use of the materials for the Works and shall cooperate with the Owner for procurement of the said materials.
- 13.(7) The Contractor shall prepare test specimens for different types of plaster, painting etc. at his own cost for approval by the Engineer.
- 13.(8) The Contractor shall prepare bar-bending schedules for reinforcement at his own cost on the basis of construction drawings issued to him by the Engineer.

### **14. Progress Chart**

- 14.(1) The Contractor shall prepare progress charts and submit the same for approval of the Engineer and for his record within twenty-one days of the Date of Commencement (herein called the "Program"). The charts shall indicate the due date of commencement and completion of each of the items of the Work and shall be in a form approved by the Engineer. Detail breakup of the progress charts as per the requirements of the Engineer shall be provided by the Contractor as per the approved format. The chart shall also indicate the scheduling of samples, Shop Drawings and approvals.

The Contractor shall, whenever required by the Engineer, also provide in writing for his information a general description of the arrangements and method which the Contractor proposes to adopt for execution of the Works.

14.(2) If at any time it should appear to the Engineer that the actual progress of the Works does not conform to the Program to which consent has been given under sub- Article 14.1, the Contractor shall produce within a week's time at the request of the Engineer, a revised Program showing the modifications to such Programs necessary to ensure completion of the Work within the Time for Completion.

14.(3) The Contractor shall, if required any time by the Engineer, deliver to the Engineer a return in detail, in such form and at such interval as the Engineer may prescribe showing the status of Work by the Contractor at Site.

14.(4) Records

The Contractor shall, at his own cost, keep all records concerning Works and progress of construction. He shall also record daily weather condition.

## **15. Access For Engineer To The Works**

15. The Engineer and his representatives shall at all reasonable times have access to the Works and to the workshops or other places of the Contractor where Work is being prepared for the Contract and when Work to be so prepared in workshops or other places of a Subcontractor (whether or not a nominated Subcontractor as defined in Article 26 of these Conditions) the Contractor shall have a term in the Subcontract so as to secure a similar right of access to those workshops or places for the Engineer and his representatives and shall do all things reasonably necessary to make such right effective.

## **16. Engineer's Status And Decisions**

16.(1) The Engineer shall be the Owner's representative during the currency of the Contract. The Engineer shall periodically visit the Site to familiarize himself generally with the progress and the quality of the Work and to determine in general if the Work is proceeding in accordance with the Contract Document. He shall not be required to make exhaustive or continuous on Site inspections to check the quality or quantity of the Work and he shall not be responsible for the Contractor's failure to carry out the construction Work in accordance with the Contract Document, and he shall condemn work which fails to conform to the Contract Document. He shall have authority to act on behalf of the Owner only to the extent expressly provided in the Contract Document. He shall have authority to stop the work whenever such stoppage may be necessary in his reasonable opinion to ensure the proper execution of the Contract.

The Engineer shall be in the first instance the interpreter of the Conditions of this Contract and the judge of its performance. He shall side neither with the Owner nor with the Contractor but shall use his powers under the Contract to enforce its faithful performance by both. In case of the termination of the appointment of the Engineer the Owner shall appoint a capable and reputable Engineer against whom the Contractor shall make no objection (whether reasonable or not) and whose status under the Contract shall be same as that of the former Engineer.

16.(2) Decision :

The Engineer shall within a reasonable time make decisions on all claims of the Owner or the Contractor and all other matters relating to the execution and progress of the work or the interpretation of the Contract Document thereof.



The Engineer may in his absolute discretion and from time to time issue further Drawings, Details and/or written instructions, written directions and written explanations in regard to:

- A. Variation or modifications of the design.
- B. The quality or quantity of Works or the additions or omission or substitution of any work.
- C. Any discrepancy in or divergence between the Drawings and / or specifications
- D. The removal and/or re-execution of any Works executed by the Contractor.
- E. The dismissal from the works of any persons employed thereon.
- F. The opening up for inspection of any Work covered up.
- G. The amending and making good of any defects under Defects Liability Period.
- H. The removal from the Site of any materials brought thereon by the Contractor and the substitution of any other material therefore.
- I. Assignment and sub-letting of Work.
- J. Delay and extension time.
- K. The postponement of any work to be executed under the provision of this Contract.

16.(3) Dismissal :

The Contractor may on the request of the Engineer immediately dismiss from the works any person employed thereon by him who may in the opinion of the Engineer be incompetent or misconducts himself and such person shall not be again employed on the work without the permission of the Engineer.

**17. Performance Bank Guarantee**

17. The Contractor shall deposit with the Owner for due performance of this Contract as security deposit a sum which shall be equal to that referred to in the Section G Appendix to the General Conditions of this Contract as Performance Bank Guarantee.

The Performance Bank Guarantee shall be in the form approved by the Owner and shall remain so deposited with the Owner till the end of three (3) months beyond the expiry of the Defects Liability Period referred to in the Section G Appendix to the General Conditions of Contract.

The Performance Bank Guarantee shall be in full force and effect and for the avoidance of doubt enforceable in India from the date of its issue through and until the date which is three (3) months beyond the expiry of the Defects Liability Period. If any dispute (whether between the Owner and the issuer of the Performance Bank Guarantee or a dispute within the meaning of this Contract between the Owner and the Contractor) has arisen and persists at the date which is thirty (30) days prior to the scheduled date of expiry of the Performance Bank Guarantee, the Contractor shall be required, to furnish the Owner with an amended or replacement Performance Bank Guarantee extending its period of validity for a period of three (3) months from the date of its scheduled expiry and otherwise complying in all respects with the requirements of this Article. The Contractor may be required, to furnish further replacement Performance Bank Guarantee if, at the date which is thirty (30) days prior to the scheduled expiry of the relevant Performance Bank Guarantee a dispute is continuing. If the Contractor fails to provide a replacement Performance Bank Guarantee in accordance with the requirements of this Article, the Owner shall be entitled to draw upon the then existing Performance Bank Guarantee in the full amount, at any time prior to the date of its scheduled expiry.

The said Performance Bank Guarantee shall indemnify the Owner against loss from defects arising from any Article under this Contract or due to the failure of the Contractor to promptly carry out any matters arising under this Contract.

## **18. Clerk Of Works**

18. The term "Clerk of Works" shall mean the person approved by the Engineer and appointed and paid by the Owner and acting under the orders of the Engineer to inspect the works in the absence of the Engineer. The Contractor shall afford the Clerk of Works every facility and assistance for inspecting the works and materials and for checking and measuring time and materials. Neither the Clerk of Works nor any representative of the Engineer shall have power to set out works or to revoke, alter, enlarge or relax any requirements of the Contract or to sanction any day work, additions, alternations, deviations or omissions, or any extra work whatever except in so far as such authority may be specially conferred by a written order of the Engineer.

The Clerk of Works or any representative of the Engineer shall have power to give notice to the Contractor or to his representative of non-approval of any work or materials and such work shall be suspended or the use of such materials shall be discontinued until the decision of the Engineer, is obtained. The works will from time to time be examined by the Engineer, the Clerk of Works or the Engineer's representative but such examination shall not in any way exonerate the Contractor from the obligation to remedy and defects which may be found to exist at any stage of the works or after the same is completed. Subject to the limitation of this Article the Contractor shall take instructions only from the Engineer.

## **19. Contractors Field Organization And Equipment**

### **19.(1) Engineer-in-Charge :**

The Contractor shall constantly keep on his work during its progress one or more qualified and competent Engineer-in-Charge who will be responsible for the carrying out of the Works to the true meaning of the Drawings, Specifications and Schedule of the Quantities, Engineer's instructions and directions to the satisfaction of the Engineer. Any directions or instructions given to Engineer-in-Charge by the Engineer shall be deemed to have been issued to the Contractor. Attention is called to the importance of requesting instructions from the Engineer before undertaking any work where Engineer's directions or instructions are required. Any such work done in advance of such instructions will be liable to be removed.

### **19.(2) Equipment :**

The Contractor shall provide and install all necessary hoists, ladders, scaffolding, tools, tackles, plants, all transport for labour materials and plant necessary for the proper carrying on execution and completion of the Work to the satisfaction of the Engineer.

### **19.(3) Office Accommodation: (DELETED)**

### **19.(4) Watchman :**

The Contractor shall make his own security arrangements to guard the Site and premises at all times, at his own expense. The security arrangements shall be adequate to maintain strict control on the movement of material and labour. The Contractor shall extend the security arrangements to guard the material stored and/or fixed on the

premises by the Subcontractors. However the possession of the site shall always remain with the Owner. The said watchman shall also abide by the directions/instructions given by the Engineer or Clerk-of-Works.

19.(5) Storage of Materials:

The Contractor shall provide, erect and maintain proper sheds for the storage and protection of the materials (including materials supplied by the owner) etc. and also for the execution of Work, which may be prepared on the Site.

19.(6) Sanitary Conveniences :

The Contractor shall provide and erect all necessary sanitary convenience for the Site staff and the workmen maintain in a clean orderly condition and clean and deodorize and sanitize the ground after removal.

19.(7) Telephone:

The Contractor shall provide a separate Telephone for the Works and shall pay all charges in connection with the same during the execution of the Work.

19.(8) Scaffolding, Staging, Guardrails :

The Contractor shall provide scaffolding, staging, guardrails, temporary stairs which shall be required during construction. The support for the scaffolding, staging, guardrails and temporary stairs shall be strong, adequate for the particular situation. The temporary access to the various parts of the building under construction shall be rigid and strong enough to avoid any chance of mishaps.

19.(9) The Contractor shall inform the Engineer about his management and staff structure for the project including the name of the Engineer-in-Charge within 7 days of signing of the Agreement.

19.(10) The Contractor shall provide and employ on the Site in connection with the execution of the Works and performance of its obligations under the Contract:

- a) only such technical personnel as are skilled and experienced in their respective callings and such sub-agents, foremen and leading hands as are competent to do or give proper supervision to the work they are required to perform or supervise, and
- b) Such skilled, semi-skilled and unskilled labour as is necessary for the proper and timely execution of the Works.

The Engineer shall be at liberty to object to and require the Contractor to remove forthwith from the Works any person employed by the Contractor or its Sub-Contractors in or about the execution of the Works who in the reasonable opinion of the Engineer misconducts himself, or is incompetent or negligent in the proper performance of his duties or whose employment is otherwise considered by the Engineer to be undesirable and such person shall not again be employed upon the Works without the permission of the Engineer. Any person so removed from the Works shall be replaced as soon as possible by a competent substitute at the cost of the Contractor.

## **20. Taxes / Duties / Levies Etc.**

- 20.(1) All taxes, duties, fees or levies of any kind whatsoever including income taxes and surcharge thereon on the income of personnel of the Contractor, excise duties, sales tax and octroi of any kind, whether payable in India or anywhere outside India, either by the Contractor or its personnel as a consequence of or incidental to the Contractor's performance of the Contract and/or on or in respect of all imported/locally procured supplies and equipment forming part of the Works are included in the Contract Sum and shall be borne by and be the liability of the Contractor and shall be paid directly by the Contractor to the relevant authorities.
- 20.(2) If direct payment of taxes, duties etc. which are the liability of and are to be borne by the Contractor as above, is not permitted by Indian law or regulations and/or if any deduction or withholding in respect of such taxes, duties etc. shall be required to be made, the Owner shall pay the sums due to the Contractor after making such deduction or withholding as may be required by the relevant law/ regulations and the Contractor shall receive only the net sum available after such deduction/ withholding. The sums so deducted/ withheld shall be deposited by the Owner with the relevant authorities on behalf of the Contractor, as per applicable law/regulation. Immediately but no later than 5 days thereafter, the Owner shall inform the Contractor of the detailed calculations of such deductions and shall provide the Contractor with the corresponding receipts from the tax authorities.
- 20.(3) The Contractor and all its personnel shall be responsible for the timely and prompt filing of all returns, documents, estimates, accounts, information and details complete and accurate in all respects as may be required under the applicable laws/regulations in India by the appropriate authorities in India. In case the Contractor or any of its personnel do not comply with the above requirements, which results in any penalty, interest or other liability, the same shall be borne by the Contractor.
- 20.(4) Each party hereby agrees to indemnify and keep indemnified and saved harmless at all times the other party against any loss, costs, expense or damage suffered or incurred by it by reason of the party which has failed to pay taxes, duties/ levies etc. which it is obliged to pay pursuant to the provisions of this Article 20 and the Special Conditions referred to in this Article and/or arising out of its failure to comply with its obligations under such provisions.
- 20.(5) Notwithstanding anything to the contrary contained herein the Owner shall not be liable for any taxes, duties, fees or levies of any kind whatsoever in India or elsewhere, of the Sub-Contractor(s) of the Contractor or the Sub-Contractor's personnel, including taxes on the income of such Sub-Contractor(s) or their personnel.

## **21. Statutory Obligations, Notices, Fees And Charges**

- 21.(1) The Contractor shall comply with, obtain all requisite prior statutory approvals and give, all notices required by any Government authority, and instrument, rule or order made under any Act of Parliament or any regulation or Bye-law of any local authority relating to the Works or with whose system the same is or will be connected. The Contractor before making any variation from the Contract Drawings or Contract Bills necessitated by such compliance shall give to the Engineer a written notice specifying and giving reasons for such variations and the Engineer may issue instructions in regard thereto. If within ten days of having given a said written notice the Contractor does not receive any instructions in regard to the matters therein specified, he shall proceed with the work conforming to the Act of Parliament, instrument, rule, order, regulations or Bye- law in

question and any variation thereby necessitated shall be deemed to be a variation required by the Engineer.

- 21.(2) The Contractor shall pay and indemnify the Owner against liability in respect of any fees or charges (including any rates and taxes) legally demandable under any Act of Parliament, instrument, rule or order or any regulation or Bye-law or any local authority in respect of the Work.

## **22. Royalties And Patent Rights**

22. All royalties or other sums payable in respect of the supply and use in carrying out the Work as desired by or referred to in the Contract Bills of any patented articles, process or inventions shall be deemed to have been included in the Contract Sum, and the Contractor shall indemnify the Owner from and against all claims, proceedings, damages, costs and expenses which may be brought or made against the Owner or to which he may be put by reason of the Contractor infringing or being held to have infringed any patent rights in relation to any such articles, processes and inventions.

## **23. Licenses And Permits For Materials Under Government Control**

23. Licenses and Permits for all materials under Government control shall be obtained by the Contractor. The Owner shall render reasonable assistance in the obtaining of such Licenses and Permits wherever a License or a permit cannot be obtained without the intervention of the Owner. The Contractor shall include in his tender all transport charges and other expense likely to be incurred to bring the materials to the Site.

## **24. Water And Electric Power For Construction**

24. The Contractor shall make an arrangement for water and electric power supply at his own cost unless specified otherwise in Section F: Special Conditions of Contract.

If the Contractor proposes to make his own arrangements for the supply of water other than from the supply authority, he shall furnish at his cost the water analysis to the Engineer for approval before use in the building work.

## **25. Assignment Or Sub-Letting**

25. The Contractor shall not without the written consent of the Engineer assign this Contract, and shall not without the written consent of the Engineer (which consent shall not be unreasonably withheld to the prejudice of the Contractor) sub-let or sub-contract any portion of the work.

## **26. Subcontractor**

26. As soon as practicable and before awarding any Sub- Contract, the Contractor shall notify the Engineer in writing the names of the Subcontractor including for plumbing and electrical works proposed for the principal parts of the work and for such other parts as the Engineer may direct, and shall not employ any Sub-Contractors to whom the Engineer or the Owner may have a reasonable objection.

The Engineer, however, shall have power to obtain estimate and select other agencies to carry out any of the works, as described below.

- 26.(1) All specialists, merchants, tradesmen, and others executing any works or supplying and fixing any goods, who may be nominated or selected by the Engineer shall be deemed

to be Subcontractors employed by the Contractor and are to be referred as nominated Subcontractors. No nominated Subcontractor shall be employed on or in connection with the work against whom, the Contractor shall make reasonable objection or (save where the Engineer and Contractor shall otherwise agree) who will not enter into a contract providing.

- 26.(1)A That the nominated Subcontractor shall carry out and complete the sub-contract works in every respect to the satisfaction of the Contractor and of the Engineer and in conformity with all the reasonable directions and requirements of the Contractor.
- 26.(1)B That the nominated Subcontractor shall observe, perform and comply with all the provisions of this Contract on the part of the Contractor to be observed, performed and complied with (other than Article 47 (A) of these conditions, if applicable) so far as they relate and apply to the Subcontract works or to any portion of the same.
- 26.(1)C That the nominated Subcontractor shall indemnify the Contractor against the same liabilities in respect of the Subcontract work as those for which the Contractor is liable to indemnify the Owner under this Contract.
- 26.(1)D That the nominated Subcontractor shall indemnify the Contractor against claims in respect of any negligence, omission or default of such Subcontractor, his servants or agents or any misuse by him or them of any scaffolding or other plant, and shall insure himself against any such claims and produce the policy, or policies and premium receipts as and when required by the Contractor or Engineer.
- 26.(1)E That payment in respect of any work, materials or goods comprised in the Subcontract shall be made by the Contractor within fourteen days after receipt by the Contractor of the Engineer's certificate under Article 31 of these conditions which states as due an amount calculated by including the total value of such work, materials or goods, and shall when due be subject to the retention by the Contractor of the sums mentioned in sub-paragraph (I).
- 26.(1)F That the Engineer and his representative shall have right of access to the workshops and other places of the nominated Subcontractor as mentioned in Article 15 of these conditions.
- 26.(1)G That the Subcontract work shall be completed within the period or (where they are to be completed in sections) periods therein specified.
- 26.(1)H That if the nominated Subcontractor shall fail to complete Subcontract work or (where the Subcontract works are to be completed in sections) any section thereof within the period therein specified or within any extended time granted by the Contractor with the written consent of the Engineer, and Engineer certifies in writing to the Contractor that the same ought reasonably so to have been completed the nominated Subcontractor shall pay or allow to the Contractor either a sum calculated at the rate therein agreed as Liquidated and Ascertained Damages for the period during which the said work or any section thereof, as the case may be, shall so remain or have remained incomplete or (where no such rate is therein agreed) a sum equivalent to any loss or damage suffered or incurred by the Contractor and caused by the failure of the nominated Subcontractor as aforesaid.

- 26.(1)I That the Contractor shall retain from the sum directed by the Engineer having been included in the calculation of the amount stated as due in any certificate issued under Article 31 of these conditions in respect of the total value of work, materials or goods executed or supplied by the nominated Subcontractor the percentage of such value named in the Appendix to these conditions as percentage of certified value retained up to a total amount not exceeding a sum which bears the same ratio to the Sub- Contract price as the unreduced sum named in the Appendix to these conditions as limit of Retention Fund bears to the Contract Sum; and that the Contractor's interest in any sums so retained (by whosoever held) shall be fiduciary as trustee for the nominated Subcontractor (but without obligation to invest); and that the nominated Subcontractor's beneficial interest in such sums shall be subject only to the right of the Contractor to have recourse thereto from time to time for payment of any amount which he is entitled under the Subcontract to deduct from any sum due or to become due to the nominated Subcontractor; and that if and when such sums or any part thereof are released to the nominated Subcontractor they shall be paid in full within fourteen days of the date fixed for their release in Subcontract.
- 26.(2) Before issuing any certificate under Article 31 of these conditions the Engineer may request the Contractor to furnish to him reasonable proof that all amounts included in the calculation of the amount stated as due on previous certificates in respect of the total value of work materials or goods executed or supplied by any nominated Subcontractor have been duly discharged and if the Contractor fails to comply with any such request the Engineer shall issue a certificate to that effect and thereupon the Owner may himself pay such amounts to any nominated Subcontractor concerned and deduct the same from any sum due or to become due to the Contractor.
- 26.(3)A The Contractor shall not grant to any nominated Subcontractor any extension of the period within which the Subcontract work or (where the Subcontract works are to be completed in sections) any section thereof is to be completed without the written consent of the Engineer, provided always that the Contractor shall inform the Engineer of any representation made by the nominated Subcontractor as to the cause of any delay in the progress or completion of the Subcontract work or any section thereof and that the consent of the Engineer shall not be unreasonably with-held.
- 26.(3)B If any nominated Subcontractor fails to complete the Subcontract work or (where the Subcontract works are to be completed in sections) any section thereof within the period specified in Subcontract or within the extended time granted by the Contractor with the written consent of the Engineer then if the same ought reasonably so to have been completed the Engineer shall certify in writing accordingly. Any such certificates shall be issued to the Contractor and immediately upon issue the Engineer shall send a duplicate copy thereof to the nominated Sub- Contractor.
- 26.(4) If the Engineer desires to secure final payment to any nominated Subcontractor before final payment is due to the Contractor, and if such Subcontractor has satisfactorily indemnified the Contractor against any latent defects then the Engineer may in an Interim Certificate include an amount to cover the said final payment and thereupon the Contractor shall pay such nominated Subcontractor the amount so certified. From such final payment the amount named in the Appendix to these conditions as limit of retention fund shall be reduced by the sum which bears the same ratio to the said amount as does such Subcontractor's Subcontract price to the Contract Sum, and save for latent defects the Contractor

shall be discharged from all liability for the work materials or goods executed or supplied by such Subcontractor under the Subcontract to which the payment relates.

- 26.(5) Neither the existence nor the exercise of the foregoing powers nor anything else contained in these conditions shall render the Owner in any way liable to any nominated Subcontractor.
- 26.(6) Where the Contractor in the ordinary course of his business directly can carry out works for which Prime Cost or Provisional Sums are included in the Contract Bills and the Engineer is prepared to receive tender from the Contractors for such items, then the Contractor shall be permitted to tender for the same or any of them but without prejudice to the Owner's right to reject the lowest or any tender. If the Contractor's tender is accepted he shall not sub-let the work without the consent in writing of the Engineer.
- 26.(7) It shall be a condition of any tender accepted under Sub Article 26(1), that Article 30 of these Conditions shall apply in respect of the Item Work included in the tender as if for the reference therein to the Contract Drawings and the Contract Bills there were references to the equivalent documents included in or referred to in the tender.
- 26.(8) The Contractor shall allow for general attendance upon Subcontractors Including free use of plant scaffolding and shall allow them the use of sanitary conveniences, storage facilities for storing materials, other amenities and affording them all reasonable facilities for carrying out their Contracts.

## **27. Prime Cost**

27. The following provisions of these conditions shall apply where Prime Cost sums are included in the Contract Bills or arise as a result of Engineer's instructions given in regard to the expenditure of provisional Sums in respect of any materials or goods to be fixed by the Contractor.
- 27.(1) Such sums shall be understood to mean the net cost to be defrayed as a Prime Cost after deducting any trade or other discount and shall include sales tax (where applicable) and other taxes and duties and the cost of packing carriage and delivery. Provided that where in opinion of the Engineer the Contractor has incurred expense for special packing or special carriage such special expense shall be allowed as part of the sums actually paid by the Contractor.
- 27.(2) Such sums shall be expended in favour of such persons as the Engineer shall instruct, and all specialists, merchants, tradesman or others who are nominated by the Engineer to supply materials or goods are hereby declared to be the suppliers to the Contractor and are referred to in these conditions as "Nominated Suppliers" provided that the Engineer shall not (save where the Engineer and Contractor shall otherwise agree) nominate as a supplier a person who will not enter into a Contract of sale which provides (inter alia):-

27.(2)A That the materials or goods to be supplied shall be to the reasonable satisfaction of the Engineer.

27.(2)B That the nominated supplier shall make good by replacement or otherwise any defects in the materials or goods supplied which appear within such period as is therein mentioned and shall bear any expenses



reasonably incurred by the Contractor as a direct consequence of such defects, provided that :

- (i) Where the materials or goods have been used or fixed such defects are not such that examination by the Contractor ought to have revealed them before using or fixing.
- (ii) Such defects are due solely to defective workmanship or material in the goods supplied and shall not have been caused by improper storage by the Contractor or misuse or by any act or neglect of either the Contractor, the Engineer or the Owner or by any person or persons for whom they may be responsible.

27.(2)C That delivery of the materials or goods supplied shall be commenced and completed at such times as the Contractor may reasonably direct.

- 27.(3) All payments by the Contractor for materials or goods supplied by a Nominated Supplier shall be in full, and shall be paid within 30 days of the end of the month during which delivery is made.

## **28. Artists And Tradesmen**

28. The Contractor shall permit the execution of work not forming part of this Contract by artists, tradesmen or others engaged by the Owner. Every such person shall for the purposes of Article 45 of these conditions be deemed to be a person for whom the Owner is responsible and not be a Subcontractor.

## **29. Separate Contracts**

- 29.(1) The Owner reserves the right to let other Contracts in connection with his work under terms and conditions as the Owner deems fit. The Contractor shall afford other contractors reasonable opportunity for the introduction and storage of their materials and the execution of their work, and shall properly connect and co-ordinate his work with theirs. If any part of Contractor's or Subcontractor's work depends for proper execution or results upon the work of any other Contractor, or Subcontractor, the Contractor shall inspect and promptly report to the Engineer any defects in such work that render it unsuitable for such proper execution and results. Failure of the Contractor to so inspect and report shall constitute an acceptance of the other Contractor's work as fit and proper for the acceptance of his work, except as to defects which may develop in the other Contractor's or Subcontractor's work after the execution of the work. To ensure the proper execution of his subsequent work the Contractor shall measure work already in place and shall at once report to the Engineer any discrepancy between the executed work and the Drawings.

- 29.(2) Co-ordination with Other Contractors.

The Engineer shall formulate a coordinated Program as between various contractors and such Program shall be binding upon the Contractor.

- 29 (3) The Contractor and his Sub-Contractors shall perform the Works in a manner so as to ensure that Owner, other contractors, their employees, agents or subcontractors can perform their works without any hindrance, obstructions, or blockages. Nor shall the /contractor and his Sub-Contractor cause any nuisance, disruptions or harassments of any kind.

### **30. Variations, Provisional And Prime Cost Sums**

- 30.(1) The Engineer may issue instruction requiring a variation and he may sanction in writing any variation made by the Contractor otherwise than pursuant to an instruction of the Engineer. No variation required by the Engineer or subsequently sanctioned by him shall vitiate this contract.
- 30.(2) The term "Variation" as used in these conditions means the alteration or modification of the design, quality or quantity of the work as shown upon the Contract Drawings and desired by or referred to in the Contract Bills, and includes the addition, omission or substitution of any work, the alteration of the kind of standard of any of the materials or goods to be used in the work, and the removal from the Site of any works, materials or goods executed or brought thereon by the Contractor for the purposes of the work other than work, materials or goods which are not in accordance with this Contract.
- 30.(3) The Engineer shall issue instruction in regard to the expenditure of Prime Cost and Provisional Sums included in the Contract Bills and of Prime Cost Sums which arise as a result of instructions issued in regard to the expenditure of Provisional Sums.
- 30.(4) All variations required by the Engineer or subsequently sanctioned by him in writing and all works executed by the Contractor for which Provisional Sums are included in the Contract Bills (other than work for which a tender made under Article 26(7) of these conditions has been accepted) shall be measured and valued by the Engineer who shall give to the Contractor an opportunity of being present at the time of such measurement and of taking such notes and measurement as the Contractor may be required. The valuation of variations and of work executed by the Contractor for which a Provisional Sum is included in the Contract Bills, (other than work for which a tender has been accepted as aforesaid) unless otherwise agreed shall be made in accordance with the following rules.
- 30.(4)A           The price in the Contract Bills shall determine the valuation of work of similar character executed under similar conditions as work priced therein.
- 30.(4)B           The said prices, where work is not of a similar character or executed under similar conditions as aforesaid, shall be the basis of prices for the same so far as may be reasonable, failing which, after due consultation by the Engineer with the Owner and the Contractor, suitable rates or prices shall be agreed upon between the Engineer and the Contractor. In the event of this disagreement the Engineer shall fix such rates or prices as are, in his opinion, appropriate and shall notify the Contractor accordingly, with a copy to the Owner.
- 30.(4)C           Where work cannot properly be measured and valued the Contractor shall be allowed day-work rates on the prices prevailing when such work is carried out (unless otherwise provided in the Contract Bills) :
- (i)           At the rates if any, inserted by the Contractor in the Contract Bills or in the form of Tender or in day work schedule or
- (ii)           When no such rates have been inserted, at the rates prevailing in the market for material and labour and at the control rates for the controlled materials including in all cases the rate for delivery of the material at the work.

(iii) Contractor's profits and overheads at 15% shall be added to the rates arrived at herein.

Provided that in any case voucher specifying the time daily spent upon the work (and if required by the Engineer the workmen's names) and the materials employed shall be delivered for verification to the Engineer or his authorized representative not later than the end of the week following that in which the work has been executed.

30.(4)D The prices in the Contract Bills shall determine the valuation of items omitted, provided that if omissions substantially vary the conditions under which any remaining items of work are carried out the prices for such remaining items shall be valued under rule (B) of this sub Article.

30.(5) Effect shall be given to the measurement and valuation of variations under Sub Article (4) of this condition in Interim Certificates and by adjustment of the Contract Sum; and effect shall be given to the measurement and valuation of work for which a Provisional Sum is included in the Contract Bills under the said Sub Article in Interim Certificate and by adjustment of the Contract Sum in accordance with Article 31(5) of these conditions.

30.(6) If upon written application being made to him by the Contractor, the Engineer is of the opinion that a variation or the execution by the Contractor of work for which a Provisional Sum is included in the Contract Bills (other than work for which a tender made under Article 26(6) of these conditions has been accepted) has involved the Contractor in direct loss and/or expense for which he would not be reimbursed by payment in respect of a valuation made in accordance with the rules contained in Sub Article (4) of the Conditions and if the said application is made within a reasonable time of the loss or expense having been incurred then the Engineer shall ascertain the amount of such loss or expense. Any amount from time to time so ascertained shall be added to the Contract Sum, and if an Interim Certificate is issued after the date of ascertainment any such amount shall be added to the amount which would otherwise be stated as due in such certificate.

### **31. Certificates And Payments**

31.(1) The Contractor shall submit to the Engineer at the period named in the Appendix to these Conditions Two copies each signed by the Contractor's authorized representative, of a statement, in such form as the Engineer may from time to time prescribe, showing the amounts to which the Contractor considers himself to be entitled under the Contract.

At the period of Interim Certificate named in the Appendix to these conditions the Engineer shall issue a certificate stating the amount due to the Contractor from the Owner, and the Contractor shall be entitled to payment therefore within the period for honoring certificates named in the Appendix to these conditions. Interim valuations shall be made whenever the Engineer considers them to be necessary for the purpose of ascertaining the amount to be stated as due in an Interim Certificate.

31.(2)A The amount stated as due in an Interim Certificate shall be the total value of the work properly executed less any amount which may be retained by the Owner (as provided in sub Article (3) of this condition) and less any installments previously paid under this Condition.

31.(2)B Value of certain materials and goods as and from such time to time as they are reasonably and properly placed at Site and then only if adequately protected

against weather or other casualties, may be included in the certificate as mentioned in the Special Conditions of Contract.

Notwithstanding the terms of this Article or any other Article of the Contract no amount will be certified by the Engineer for payment until fulfillment of provisions under this Contract by the Contractor.

31.(3) The Owner may retain the percentage of the total value of the work, materials and goods referred to in Sub- Article (2) of this condition which is named in the Appendix to these Conditions as retention percentage. Provided always that when the sum of the amount so retained equals the amount named in the said Appendix as limit of retention fund or that amount as reduced in pursuance of Article 26(4) of these Conditions, as the case may be, no further amount shall be retained by virtue of this Sub Article.

31.(4) The amounts retained by virtue of Sub Article (3) of this Condition shall be subject to the following rules:-

31.(4)A The Owner's interest in any amount so retained shall be fiduciary as trustee for the Contractor (but without obligation to invest), and the Contractor's beneficial interest therein shall be subject only to the right of the Owner to have recourse thereto from time to time for payment of any amount which he is entitled under the provisions of this Contract to deduct from any sum due or to become due to the Contractor.

31.(4)B On the issue of the certificate of virtual completion the Engineer shall issue a certificate for one moiety, of the 50 per cent of amounts then so retained and the Contractor shall be entitled to payment of the said moiety within the period for honoring certificate named in the Appendix to these Conditions and on expiry of maintenance period the Engineer shall issue a certificate for one moiety, of the balance 50 per cent of total amounts retained and the Contractor shall be entitled to payment of the said moiety within the period for honoring certificates names in the Appendix to the Conditions.

31.(5)A The measurement and valuation of the work shall be completed within the period of final measurement and valuation stated in the Section G - Appendix to these Conditions, and the Contractor shall be supplied with a copy of the priced bills of variation not later than the end of the said period and before the issue of the Final Certificate under Sub Article (6) of this Condition.

Notwithstanding any provision in the relevant method of measurement or any general or local custom, measurement of work done under the Contract shall be taken in accordance with the procedure set for the in the Preamble to the Bill of Quantities. In case of items of work which are not covered by the Preamble to the Bill of Quantities, measurement shall be carried out in accordance with the relevant standard methods of measurements laid down in IS 1200 therein.

All items having a financial value shall be measured in the manner as prescribed by the Engineer so that a complete record is maintained of all work performed under the Contract. All records shall be made in two copies one copy shall be kept by the Engineer and the other copy by the Contractor.

Measurement shall be taken jointly by the Engineer or his authorized representative and the Contractor or his authorized representative.

Before taking measurements of any works, the Contractor shall give a reasonable notice to the Engineer or his authorized representative.

Measurement shall be signed and dated by both Parties on the Site on completion of measurement. If there is any dispute in any of the measurements a note to that effect shall be made in the measurement record against the disputed items and such note shall be signed and dated by both Parties engaged in taking the measurement.

- 31.(5)B Either before or within a reasonable time after Virtual Completion of the work the Contractor shall send to the Engineer all documents necessary for the purposes of the computation required by these Conditions including all documents relating to the accounts of nominated Subcontractors and Nominated Suppliers.
- 31.(5)C In the settlement of accounts the amounts paid or payable under the appropriate contract by the Contractor to nominated Subcontractor or nominated supplier the amount paid shall be taken into account.
- 31.(6) So soon as is practicable but before the expiration of the period the length of which is stated in the Appendix to these Conditions from the end of the Defects Liability Period also stated in the said Appendix or from completion of making good defects under Article 40 of these conditions or from receipt by the Engineer of the Documents referred to in paragraph (b) of Sub Article (5) of this Condition, whichever is the latest, the Engineer shall issue the Final Certificate. The Final Certificate shall state:
- 31.(6)A The sum of the amount paid to the Contractor under Interim Certificate and the amount named in the said Appendix as limit of Retention Fund, and,
- 31.(6)B The Contract Sum adjusted as necessary in accordance with the terms of these Conditions, and the difference (if any) between the two sums shall be expressed in the said Certificate as a balance due to the Contractor from the Owner or to the owner from the Contractor as the case may be, and subject to any deductions authorized by these Conditions, the said balance shall be a debt payable as the case may be by the Owner to the Contractor or by the Contractor to the Owner, upon expiry of one month from the date of issue of the said Certificate.
- 31.(7) Income-tax deduction and other statutory deductions at the rate prevailing at the time of payment will be deducted from each running bill and final bill in accordance with laws.

### **32. Claim For Extra**

32. When any instruction or decision given at Site involves an extra or whereby the Contractor may plan to claim an extra, it shall be the responsibility of the Contractor to inform the Engineer of the extra amount and get written authorization from the Engineer before proceeding with the work involved.

Any modification carried out for expediting or simplifying work at the request of the Contractor or his representatives shall not be taken as the basis for claiming an extra. However, if such modification shall also involve an extra, the rate for such modification shall be settled in advance and written authorization obtained by the Contractor from the Engineer before proceeding with the work involved. If no such information is given by the Contractor in writing to the Engineer such modification shall not be accepted as the basis for extra charge.

### **33. Deduction For Uncorrected Work**

If the Engineer deems it inexpedient to correct work damaged or not done in accordance with the Contract, an equitable deduction from the Contract Sum shall be made thereof.

**34. Fluctuations**

34. The Contractor shall not claim any extra for fluctuation of price and the Contract Sum shall not be subject to any rise or fall of prices.

**35. Unfixed Goods And Materials**

35. Unfixed materials and goods intended for, delivered to and placed on or adjacent to the work shall not be removed except for use upon the Work unless the Engineer has consented in writing to such removal which consent shall not be unreasonably withheld. Where the value of such materials or goods has in accordance with Article 31(2) of these conditions been included in any Interim Certificate under the Contract for which the Contractor has received payment, such materials and goods shall become the property of the Owner, but subject to Article 47(b) of these conditions (if applicable) the Contractor shall remain responsible for loss or damage to the same.

**36. Material And Workmanship**

- 36.(1) All materials and workmanship shall be as per the relevant Standards/ Specifications of the Indian Standards Institution, unless specifically provided in these Specifications of this Contract and/or of approved type and the Contractor shall immediately remove from the works any materials and/or workmanship which in the opinion of the Engineer are defective or unsuitable and shall substitute proper materials and/or workmanship at his own cost. The term approval used in connection with this contract shall mean the approval of the Engineer.

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

The standards which shall be used for structural calculations and materials, for drawings and for the determination of subsequent quantities, if any, shall be as specified in the Contract and if not specified shall be the relevant best international engineering code/practice. Where such code/practice is not in the English language or is not readily available the Contractor shall at its cost furnish to the Owner two copies thereof in English at least one month prior to the submission to the Owner of the relevant designs/drawings.

- 36.(2) The Contractor shall if required submit satisfactory evidence as to the kind and quality of material.
- 36.(3) Where special makes or brands are called for they are mentioned as a standard. Others of equal quality may be used provided approval is first obtained in writing from the Engineer. Unless substitutions are requested no deviation from the Specification will be permitted. Failure to propose the substitution of any articles within 30 days after signing of the Contract will be deemed sufficient cause for denial of the request for substitution.
- 36.(4) The Contractor shall indicate and submit evidence in writing of those materials or articles called for in the Specifications that are not obtainable for installation in the work within the Time Limits of the Contract. Failure to indicate the above, within 30 days after the

signing of the Contract, will be deemed sufficient cause for the denial of request for the extension of the Contract time.

- 36.(5) All material shall be delivered so as to insure a speedy and uninterrupted progress of the work. Such material shall be stored so as to cause no obstruction and so as to prevent overloading of any portion of the structure, and the Contractor shall be entirely responsible for damage or loss by weather or other cause.
- 36.(6) Within 30 days after signing the Contract, the Contractor shall submit for approval of the Engineer a complete list of all material he and his Subcontractors propose to use in the work, of definite brand or make which differ in any respect from those specified; also the particular brand of any articles where more than one is specified as a standard. The Contractor shall also list items not specifically mentioned in the Specifications but which are reasonably inferred and necessary for the completion of the work.

### **Inspection**

- 36.(7) All materials and workmanship shall be subject to inspection, examination and test by the Engineer at any and all times during manufacture and/or construction including owner supplied items. The Engineer shall have right to reject defective material and workmanship or require its correction. Rejected workmanship shall be satisfactorily replaced with proper material without additional charge or extra time thereof and the Contractor shall promptly segregate and remove the rejected materials from the Works. Upon rejection by the Engineer, if the Contractor fails to proceed at once with the replacement of rejected materials and/or the corrections of defective workmanship, the Engineer may by contract or otherwise replace such materials and/or correct such workmanship and charge the cost thereof to the Contractor, or may terminate the Contract and get the remaining Works executed by some other contractor at the cost and risk of the Contractor.

The Contractor shall furnish promptly without additional charge all reasonable facilities, labour and materials necessary for the safe and convenient inspection and test that may be required by the Engineer.

### **Testing**

- 36.(8) The Contractor shall provide for all costs of testing of materials and works & his rates shall be considered to be inclusive of all such costs.

## **37. Defects**

- 37.(1) The Contractor shall make good at his own cost and to the satisfaction of the Engineer, all defects, shrinkages or faults, arising in the opinion of the Engineer from work or materials not being in accordance with the Drawings or Specifications or Schedule of Quantities or the Instructions of the Engineer, which may appear within "Defects Liability Period" referred to in the Section G, Appendix to General Conditions of Contractor.
- 37.(2) Such defects, shrinkages, faults, shall upon directions in writing of the Engineer, and within such reasonable time as shall be specified therein be amended and made good by the Contractor, at his own cost unless the Engineer shall decide that he ought to be paid for such amending and making good and in case of default the Owner may employ and pay other Contractor to amend and make good such defects, shrinkage, settlements or other faults and all damages loss and expense consequent thereon or incidental thereto shall be made good and borne by the Contractor and such damage, loss or expense shall be recoverable from him by the Owner or may be deducted by the Owner

upon the Engineer's Certificate in writing from any amount due or may become due to the Contractor or the Owner may, in lieu of such amending and making good by the Contractor deduct from any moneys due to the Contractor a sum to be determine by the Engineer as equivalent to the cost of amending such work and in the event of the Retention Amount being insufficient recover the balance from the Contractor, together with any expenses the Owner may have incurred in connection therewith.

### **38. Possession, Completion And Postponement**

- 38.(1) On the Date of Commencement stated in Section G - Appendix to these Conditions, permission to enter & work on the Site shall be given to the Contractor who shall thereupon begin the works and regularly and, diligently proceed with the same and who shall complete the same on or before the date for Completion stated in the said Appendix subject nevertheless to the provision for extension of time contained in Article 40 of these Conditions.
- 38.(2) The Engineer may issue instructions in regard to the postponement of any work to be executed under the provision of this Contract.

### **39. Virtual Completion**

39. If at any time or times before Virtual Completion of the Work, the Owner takes over any part or parts of the same for handing over to the Finishing Contractor or other agency, then not withstanding anything expressed or implied elsewhere in this Contract.
- 39.(1) Such part or parts shall not be deemed to be Virtually Complete.
- 39.(2) Virtual Completion of such part or parts would occur on the completion of the last part of the structure under this Contract.
- 39.(3) The Contractor shall not claim that such part or parts are complete and request refund of payment in lieu thereof.

### **40. Extension**

40. Upon it becoming reasonably apparent that the progress of the Works is delayed or is likely to be delayed, the Contractor shall forthwith give written notice of the cause of the delay to the Engineer, and if in the opinion of the Engineer, the completion of the Works is likely to be or has been delayed beyond the Date of Completion stated in the Section G - Appendix to these Conditions or beyond any extended time previously fixed under this Article:
- 40.(1) By Force Majeure
- Force majeure shall mean war, hostilities (whether war be declared or not), invasion, act of foreign enemies, revolution, insurrection or military or usurped power, civil war, or radiations or contamination by radio activity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel, radio- active toxic explosive, or other hazardous properties of any explosive, nuclear assembly or nuclear component thereof, or any such operation of the forces of nature as an experienced contractor could not foresee, or reasonably make provision for or insure against all of which are herein collectively referred to as "Force Majeure".
- 40.(2) By reason of any exceptionally inclement weather requiring total stoppage in work. Or



- 40.(3) By reason of loss or damage occasioned by any one or more of the contingencies referred to in Article 47(a) and (b), of these Conditions. Or
- 40.(4) By reason of civil commotion, affecting any of the trades employed upon the works or any of the trades engaged in the preparation, manufacture or transportation of any of the goods or materials required for the Work. Or
- 40.(5) By reason of Engineer's instructions issued under Articles 9, 30(1) or 38 (2) of these Conditions. Or
- 40.(6) By reason of the Contractor not having received in due time necessary instructions, drawings, details or levels from the Engineer for which he specifically applied in writing on a date which having regard to the Date for Completion stated in the Section G - Appendix to these Conditions or to any extension of time then fixed under this Article was neither unreasonably distant from nor unreasonably close to the date on which it was necessary for him to receive the same. Or
- 40.(7) By reason of the opening up for inspection of any work covered up or of the testing of any of the work ,in accordance with Article 36 (7) of these Conditions (including making good in consequence of such opening up or testing) unless the inspection of test showed that the work is not in accordance with this Contract.

then the Engineer shall so soon as he is able to estimate the length of the delay beyond the date or time aforesaid make in writing a fair and reasonable Extension of Time for completion of the works, provided always that the Contractor shall use constantly his best endeavors to prevent delay and shall do all that may reasonably be required to the satisfaction of the Engineer to proceed with the work.

#### **41. Liquidated Damages For Non-Completion**

- .01 The Contractor undertakes, without limiting its other obligations under the Contract, that each Milestone shall be achieved by the Milestone Date applicable thereto and that Completion shall be achieved by the Completion Date to the complete satisfaction of the Engineer.
- .02 If the Contractor fails to achieve the Milestones by the Milestone Date applicable thereto, the Contractor shall be liable to pay the Owner as liquidated damages, on a weekly basis as mentioned.
- .03 All and any liquidated damages provided for in this Article shall be due and payable by the Contractor within forty five (45) days of the date of issue by the Owner of a notice in respect of the same from time to time.
- .04 The aggregate maximum liability of the Contractor for liquidated damages for delay pursuant to this Article shall be equal to five percent (5%) of the Contract Sum provided that any amounts payable under policies of insurance in respect of any delay in completion of the Works (whether such insurance is procured by the Contractor or the Owner) shall not count towards the maximum liability of the Contractor under this Article. For the avoidance of doubt, the Contractor shall be liable to pay liquidated damages pursuant to this Article regardless of whether the Contractor raises a dispute as to whether such amounts are payable. Accordingly, the Owner may recover such liquidated damages by (at its option):

- 1. drawing on the Performance Bank Guarantee under Article 17;  
or

2. reducing the Contract Sum by an amount equal to such amounts;  
or
3. setting-off such amounts from any amounts due (or which become due) to the Contractor under this Contract;  
or
4. recovering such liquidated damages as a debt due and payable by the Contractor,

regardless of whether such amounts are subject to a dispute or not.

- .05 In the event the Owner draws on the Performance Bank Guarantee pursuant to Article 17, the Contractor shall, from time to time and within seven (7) days of any such drawing, replenish the Performance Bank Guarantee by an amount equal to the drawing made by the Owner pursuant to this Article.
- .06 Notwithstanding the provisions of this Article, if the Contractor's obligation to pay liquidated damages pursuant to this Article is or becomes unenforceable for any reason whatsoever, the Contractor shall be liable to the Owner to pay unliquidated damages in respect of the failure of the Contractor to achieve a Milestone by the Milestone Date applicable thereto, such damages being assessed from the Milestone Date until the relevant Milestone has been achieved, provided that the Owner shall not seek to recover compensation in excess of what it would have been entitled to under this Article had such Article been enforceable. For the purposes of calculating the unliquidated damages payable by the Contractor to the Owner pursuant to this Article, the Owner shall be entitled to recover damages attributable to any loss of any Works, loss of profits, loss of any contract or any other indirect or consequential losses or damage suffered by the Owner
- .07 Genuine Pre-Estimate:

The Contractor acknowledges and agrees that the various liquidated damages amounts set out in this Article are genuine agreed pre-estimates of the Owner's loss arising from any failure of the Contractor to meet the Milestone Dates.

#### **42. Virtual Completion And Defects Liability Period**

- 42.(1) When in the opinion of the Engineer the works are practically completed, he shall forthwith issue a certificate to that effect and Virtual Completion of the Work shall be deemed for all the purpose of this Contract to have taken place on the day named in such certificate.
- 42.(2) The Engineer may whenever he considers it necessary to do so, issue instructions requiring any defect, shrinkages or other fault which shall appear within the Defects Liability Period named in the Section G - Appendix to these Conditions to be made good and the Contractor shall within 30 days after receipt of such instruction comply with the same (and unless the Engineer shall otherwise instruct in which case the Contract Sum shall be adjusted accordingly) entirely at his own cost. In the said certificate the Engineer shall also specify the time in which the defect, shrinkage or fault should be made good and the Contractor shall be bound to make good within the said time period.
- 42.(3) When in opinion of the Engineer any Defects, shrinkages and other defaults which he may have required to be made good under sub- Article (2) and (3) of this Condition shall have been made good he shall issue a certificate to that effect, and completion of making

good defects shall be deemed for all purposes of this Contract to have taken place on the day named in such certificates.

#### **43. Loss And Expense Caused By Disturbance Of Regular Progress Of The Works**

43.(1) If upon written application being made to him by the Contractor, the Engineer is of the opinion that the Contractor has been involved in a direct loss, not being a consequential, indirect or remote loss, for which he would not be reimbursed by a payment made under any other provision in this Contract by reason of the regular progress of the works or of any part thereof having been materially affected solely by:

43.(1)A The Contractor not having received in due time necessary instructions, drawings, details or levels from the Engineer for which the Contractor has specifically applied in writing on a date which having regard to the Date for Completion stated in the Section G - Appendix to these Conditions was neither unreasonably distant from nor unreasonably close to the date on which it was necessary for the Engineer to receive the same, or

43.(1)B The opening up for inspection of any work covered up or the testing of any work material or goods in accordance with the Article 36 (7) of these conditions (including making good in consequence of such opening up or testing), unless the inspection or test showed that the Work materials or goods were not in accordance with this Contract, or that the Work, material or goods were of inadequate quality or nature due to any acts or omissions or negligence of the Contractor, or

43.(1)D Engineer's instructions issued in regard to the postponement of any Work to be executed under the provisions of this Contract; and if the written application is made within a reasonable time of it becoming apparent that the progress of the Work or of any part thereof has been affected as aforesaid :

Then the Engineer shall after receiving an approval from the Owner ascertain the amount of such loss and/or expense. Any amount from time to time so ascertained shall be added to the amount which would otherwise be stated as due in such certificate. The decision of the Engineer with regards to ascertainment of such loss would be final and binding on the Parties. Further the Parties specifically agree that no loss or damage under this contract will be payable if it is consequential, remote or indirect.

#### **44. Payments Withheld**

44. The Engineer may withhold or on account of subsequently discovered evidence nullify the whole or a part of any certificate to such extent as may be necessary in his reasonable opinion to protect the Owner from loss on account of:

44.(1) Defective work not remedied.

44.(2) Failure of the Contractor to make payments properly to Subcontractor or for materials or labour.

44.(3) Damage to another contractor or sub-contractor.

44.(4) Claims filed or reasonable evidence indicating probable filling of claims.

When the above grounds are removed to the full satisfaction of the Engineer, payment shall be made for amounts withheld because of them.

- 44.(5) Material breach of any of the provisions of this Contract (including representations and warranties as provided herein) which in the reasonable opinion of the Engineer has been committed by the Contractor .

#### **45. Injury To Persons And Property**

- 45.(1) The Contractor shall be liable for and shall indemnify the Owner against any liability, loss, claim or proceedings whatsoever, in respect of personal injury to or the death of any person whomsoever arising out of or in the course of or caused by the Contractor or his Sub-Contractor carrying out of the works.
- 45.(2) The Contractor shall be liable for and shall indemnify the Owner against any expense, liability, loss, claim or proceedings in respect of any injury or damage whatsoever to any property real or personal in so far as such injury or damage arises out of, or, in the course of or, by reason of the Contractor or his Sub-Contractor carrying out of the works.

#### **46. Insurance Against Injury To Persons And Property**

- 46.(1) Without prejudice to his liability to indemnify the Owner under Article 45 of these Conditions, the Contractor shall maintain and shall cause any Subcontractor to maintain:

46.(1)A Such insurances (**Workmen compensation policy**) as are necessary to cover the liability of the Contractor or as the case may be of such Sub- Contractor, in respect of personal injuries or deaths arising out of or in the course of or caused by the carrying out of the work; and

46.(1)B Such insurances (**Contractor's Plant and Machinery insurance &/or Motor Third Party Insurance**) as may be specifically required by the Contract Bills in respect of injury or damage to property real or personal arising out of or in the course of or by reason of the Contractor or his Sub-Contractor carrying out the work, and caused by any negligence, omission or default of the Contractor, his servants or agents or, as the case may be of such Sub- Contractor, his servants or agents.

The Contractor shall produce or cause any Subcontractor to produce for inspection the relevant policy or policies of insurance together with the receipts in respect of premiums paid under such policy or policies as and when required so to do by the Engineer provided always that as and when may be reasonably required by the Engineer the production by either the Contractor or any Subcontractor of a current certificate of insurance from the company or firm which shall have issued the policy or policies aforesaid shall be a good discharge of the Contractor's obligation to produce or to cause the production of the policy or policies and the receipts in respect of premium paid.

46.(2)A The Contractor shall maintain in the joint names of the Owner and Contractor such insurances as may be required in respect of any expense, liability, loss, claim or proceedings which the Owner may incur or sustain by reason of injury or damage to property real or personal arising out of or in the course of or by reason of the carrying out of the work, and caused otherwise than by the negligence, omission or default of the Contractor, his servants or agents of any Subcontractor, his servants or agents.

46.(2)B Any such insurance as is referred to in the immediately preceding paragraph shall be placed with insurers to be approved by the Engineer and the Contractor shall have to deposit with him the policy or policies and the receipts in respect of premiums paid.

46.(3) Should the Contractor or any Subcontractor make default in insuring or in continuing to insure as provided in sub Articles (1) and (2) of this condition the Owner may himself insure against any risk with respect to which the default shall have occurred and may deduct a sum equivalent to the amount paid in respect of premiums from any monies due to or become due to the Contractor.

#### **47. Insurance Of The Works Against Fire Etc.**

47. A The Contractor shall in the joint names of the Owner and Contractor obtain and maintain a comprehensive Contractor's all risk policy which should also cover insurance against loss or damage by fire, storm, tempest, lightning, flood, earthquake, aircraft or anything dropped there from, aerial objects, riot and civil commotion for the full value thereof all work executed and all unfixed materials and goods intended for, delivered to and placed on or adjacent to the work, but excluding temporary building plant, tools and equipment owned or hired by the Contractor or any Subcontractor and shall keep such work materials and goods so insured until Virtual Completion of the work. Such insurances shall be with insurers approved by the Engineer and the Contractor shall deposit with the Engineer the policy or policies and the receipts in respect of premiums paid : and should the Contractor make default in insuring or continuing to insure as aforesaid the Owner may himself insure against any risk with respect of which the default shall have occurred and deduct a sum equivalent to the amount paid by him in respect of premium from any monies due to or to become due to the Contractor.

Provided always that if the Contractor shall independently of his obligations under this Contract maintain a policy of insurance which covers (inter alia) the said work, materials and goods against the aforesaid contingencies to the full value thereof then the maintenance by the Contractor of such policy shall if the Owners interest is endorsed thereon, be a discharge of the Contractor's obligation to insure in the joint names of the Owner and Contractor and the production by the Contractor as and when may reasonably be required by the Engineer of a current certificate of insurance from the company or firm which shall have issued the said policy shall be a discharge of the Contractor's obligation to deposit with the Engineer a policy or policies and the receipts in respect of premiums paid.

47. B Upon settlement of any claim under the insurances aforesaid the Contractor with due diligence shall restore work damaged, replace or repair unfixed materials or goods which have been destroyed or injured, remove or dispose of any debris and proceed with the carrying out and completion of the work. All monies received from such insurances shall be paid to the Contractor by installments under certificates of the Engineer issued at the period of interim certificates named in the Section G - Appendix to these Conditions. The Contractor shall not be entitled to payment in respect of the restoration of work damaged, the replacement and repair of any unfixed materials or goods and the removal and disposal of debris other than the monies received under the said insurances.

#### **48. Determination By The Owner**

48.(1) Owner's Right to Terminate at Will

The Owner may terminate this Contract at any time by giving the Contractor not less than thirty (30) days' notice. Unless the notice states otherwise, the Contractor shall, on receipt of the notice immediately discontinue the carrying out of the Works, leave the Site and make every reasonable effort to procure cancellation of all existing commitments or assign such commitments to the Owner (at the Owner's discretion) and use reasonable efforts to mitigate the damages resulting therefrom and generally take all steps, in accordance with the standard of a reasonable and prudent contractor, to minimise all costs arising from such termination. Further, the Contractor shall immediately take such steps as the notice shall specify to protect the Works and render them safe.

48.(2) Default :

If the Contractor shall make default in any one or more of the following respects, that is to say,

- 48.(2)A If he without reasonable cause wholly suspends the carrying out of the works before completion thereof, or
- 48.(2)B If he fails to proceed regularly and diligently with the works, or
- 48.(2)C If he refuses, fails or neglects to comply with a written notice from the Engineer requiring him to remove defective work or improper materials or goods, or
- 48.(2)D If he fails to comply with the provision of Article 25.

then the Engineer may give him the notice by registered post or courier specifying the default, and if the Contractor either shall continue such a default for 14 days after receipt of such a notice and shall at any time thereafter repeat such a default (whether previously repeated or not). Then the Owner without prejudice to any other rights or remedies may within 14 days after such continuance or repetition by notice by registered post or recorded delivery forthwith determine the employment of the Contractor under this Contract, provided that such notice shall not be given unreasonably or vexatiously.

48.(3) Bankruptcy of Contractor :

In the event of the Contractor becoming bankrupt, insolvent or making a composition or arrangement with his creditors or being a company having a winding up order made or (except for purposes of reconstruction) a resolution for voluntary winding up passed or a receiver or manager of his business or undertaking duly appointed or possession taken by or on behalf of the holders of any debentures secured by a floating charge, of any property comprised in or subject to the floating charge, the employment of the Contractor under this Contract shall be forthwith automatically determined but the said employment may be reinstated and continued if the Owner and the Contractor, his trustee in bankruptcy, liquidator, receiver or manager as the case may be shall so mutually agree.

48.(4) The Owner shall be entitled to determine the employment of the Contractor under this Contract if the Contractor shall have offered or given or agreed to give to any person any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any action in relation to the obtaining or execution of this Contract with the Owner, or for showing or forbearing to show favour or disfavor to any person in relation to this Contract or any other Contract with the Owner, or if the like acts shall have been done by any person employed by the Contractor or acting on his behalf (whether with or without the knowledge of the Contractor), or if in relation to

this Contract or any other Contract with the Owner the Contractor or any person employed by him or acting on his behalf or shall have given any fee or reward the receipt of which is an offence under the laws of the land.

48.(5) In the event of the employment of the Contractor being determined as aforesaid and so long it has not been reinstated and continued, the following shall be the respective rights and duties of the Owner and Contractor.

48.(5)A The Owner may employ and pay other persons to carry out and complete the works and he or they may enter upon the works and use all temporary buildings, plant, machinery, appliances, goods and materials intended for, delivered to and placed on or adjacent to the works and may purchase all materials and goods necessary for the carrying out and completion of the Works.

48.(5)B The Contractor shall if so required by the Owner or Engineer within 14 days of the date of determination assign to the Owner without payment the benefit of any Agreement for the supply of materials or goods and/or for the execution of any Works for the purposes of this Contract. In any case the Owner may pay any supplier or Subcontractor for any materials or goods delivered or Works executed for the purpose of the Contract (whether before or after the date of determination), in so far as the price thereof has not already been paid by the Contractor. The Owner's rights under this paragraph are in addition to his rights to pay nominated Sub- Contractors as provided in Article 26(2) and payments made under this paragraph may be deducted from any sum due or to become due to the Contractor.

48.(5)C The Contractor shall as and when required in writing by the Engineer so to do (but not before) remove from the Works any temporary buildings, plant, tool, equipments, goods and materials belonging to or hired by him. If within a reasonable time after any such requirements has been made the Contractor, has not complied therewith then the Owner may (but without being responsible for any loss or damage) remove and sell any such property of the Contractor, holding the proceeds less all costs incurred to the credit of the Contractor.

48.(5)D Notwithstanding anything stated herein following the date of any termination of this Contract, the Owner shall be under no obligation to make any further payments to the Contractor until such time as the Works have otherwise been completed by the Owner (through engaging alternative contractors). As soon as practicable after the date of completion of the Works, the Owner shall calculate the amount owing to the Contractor pursuant to this Contract as of the date of termination. From this amount the Owner shall be entitled to deduct the following amounts:

- a. the difference (if any) between the Owner's actual cost of completing the Works (including, for the avoidance of doubt, all payments made to the Contractor in relation to this Contract) and the Contract Sum (as such may have been adjusted in accordance with the terms of this Contract prior to the date of termination); and

- b. any other additional costs or losses, incurred by the Owner that resulted from the termination of this Contract.

The Owner shall forthwith notify the Contractor in writing of the details of the above calculation and the end balance. If the calculation:

- a. results in a credit to the Contractor, the Owner shall pay the whole of the balance to the Contractor within [fourteen (14)] days of the date of the written notice containing the detailed calculation;

or

- b. results in a credit to the Owner, the Contractor shall pay the whole of the balance to the Owner within fourteen (14) days of the date of the written notice containing the detailed calculation.

- 48.(6) Right of Owner to terminate Contract in the event of death of Contractor, if individual.

Without prejudice to any of the rights or remedies under this contract, if the Contractor, being an individual, dies, the Owner shall have the option of terminating the Contract without incurring any liability for such termination.

#### **49. Determination By The Contractor**

- 49.(1) Without prejudice to any other rights and remedies which the Contractor may possess, if the carrying out of the whole or substantially the whole of the uncompleted works (other than the execution of work required under Article 42 of these conditions) is suspended for a continuous period of 90 days by reason of:

- (i) Force majeure, Or
- (iii) Civil commotion substantially affecting the course of works, Or
- (iv) Engineer's instructions issued under Article 38(2) of these Conditions, Or
- (vi) Delay on the part of Artists, Tradesmen or others engaged by the Owner in executing work not forming part of this Contract.

Then the Contractor by notice by registered post or courier to the Owner with a copy to the Engineer inform of his intention to serve a notice to determine the Contract forthwith unless the default is remedied within 90 days as the case may be.

- 49.(2) Upon such determination, then without prejudice to the accrued rights or remedies of either party or to any liability of the classes mentioned in Article 43 of these Conditions which may accrue either before the Contractor or any Subcontractors shall have removed his or their temporary buildings, plant, machinery, appliances, goods or materials or by reason of his or their so removing the same, the respective rights and liabilities of the Contractor and the Owner shall be as follows that is to say :

- 49.(2)A The Contractor shall with all reasonable dispatch and in such manner and with such precautions as will prevent injury, death or damage of the property in respect for which before the date of determination he was liable to indemnify the Owner under Article 42 of these Conditions remove from Site all his temporary buildings, plant, machinery,



appliances, goods and materials and shall give facilities for his Subcontractors to do the same but subject always to the provisions of Sub- paragraph (iii) of paragraph (b) of this Sub Article.

49.(2)B After taking into account amounts previously paid under this Contract the Contractor shall be paid by the Owner:

- (i) The total value of the Works completed at the date of determination.
- (ii) The total value of Work begun and executed but not completed at the date of determination the value being ascertained mutatis in accordance with Article 30(4) of these Conditions.
- (iii) The cost of materials or goods properly ordered for the Works for which the Contractor shall have paid or of which the Contractor is legally bound to pay, and on such payment by the Owner materials or goods so paid for shall become the property of the Owner.
- (iv) The reasonable cost of the removal under paragraph (a) of this Sub Article.
- (v) Any direct loss and/or damage caused to the Contractor by the determination.

Provided that in addition to all other remedies the Contractor upon such determination shall have a lien over unfixed materials not forming part of the permanent works which may have become the property of the Owner under Article 35 until payment of all monies due to the Contractor from the Owner.

## **50. Co-Ordination Of Work**

50. At the commencement of work, and from time to time, the Contractor shall confer with the Subcontractors, persons, engaged on separate contracts in connection with the work, and with the Engineer for the purpose of the co-ordination and execution of the various phases of the work.

The Contractor shall ascertain the Subcontractors, persons engaged on separate Contracts in connection with the Works, the extent of all chasings, cuttings and forming of all openings, holes, grooves, etc. as may be required to accommodate the various services, the Contractor shall ascertain the routes of all services and the positions of all floor outlets, traps, etc. in connection with the installation of plant and services and arrange for the Construction of Work accordingly. The breaking and cutting of completed work must be avoided.

## **51. Labour**

51.(1) The Contractor shall employ no child labour on the work. If female labour is engaged the Contractor shall make necessary provision for safeguarding small children and keeping them clear of the Site of operations. No labourer shall reside within the compound except authorized guards.

- 51.(2) The Contractor shall make its own arrangements for the engagement of all labour, local or otherwise, and, save in so far as the Contract otherwise provides, for the transport, housing, feeding and payment thereof.
- 51.(3) The Contractor shall at its expenses, ensure due compliance with all applicable and governing Indian laws including industrial and labour laws, rules and regulations and bye-laws both of the Central and state Governments and all other local authorities and shall keep the Owner harmless and indemnified in respect thereof.
- 51.(4) The Contractor shall ensure due compliance with the provisions of the relevant Minimum Wage Act, Payment of Wages Act, Contract Labour (Regulation and Abolition) Act, Workmen's Compensation Act, E.P.F. Act and other labour / industrial laws in force.
- 51.(5) The Contractor shall not indulge in any unfair labour practices.
- 51.(6) The Contractor shall obtain necessary license from the Licensing Authority under the Contract Labour (Regulation & Abolition) Act, 1970 and the Central & State Rules framed there under and produce the same to Owner/Engineer before the start of work.
- 51.(7) The Contractor shall not undertake or execute or permit any other agency or Sub-Contractor to undertake or execute any work on the Contractor's behalf through contract labour except under and in accordance with the license issued in that behalf by the licensing officer or other authority prescribed under the Factories Act or the contract labour (Regulation & Abolition) Act, 1970 or their applicable law, rule or regulation, if applicable.
- 51.(8) The provision of EPF & MP Act, 1952 and the Rules / Scheme there under shall be applicable to the Contractor and the Employees engaged by him for the work. The Contractor shall furnish the code number allotted by the RPFC Authority, to Engineer before commencing the work.
- 51.(9) The Contractor shall enforce the provisions of ESI Act and Scheme framed there under with regard to all his employees involved the performance of the Contract, and shall deduct employee's contribution from the wages of each of the employee and shall deposit the same together with the his contribution of such wages payable to the employees in the appropriate account.
- 51.(10) The Contractor shall provide adequate drinking water and toilet facilities to labour employed on Site.
- 51.(11) No labourer shall be allowed to reside within the Site. The Contractor shall not be allowed to have any labour colony within the Site. Arrangements outside the Site for this purpose shall be made by the Contractor on his own expense.
- 51.(12) Except as it may be otherwise expressly provided in the Contract, the Contractor shall indemnify the Owner including every member, officer and employee of the Owner, and the Engineer-in-Charge and his staff against all actions, proceedings, claims, demands, costs and expenses what-so-ever which may be made against all or any of them for or in respect of or arising out of any failure by the Contractor including its sub-contractor in the performance of his obligations under the Contract. The Owner shall not be liable for or in respect of any damages or compensation payable by law or otherwise in respect of or in consequence of any accident or injury to any workmen or other person in the employment of the Contractor or his sub-contractor and the Contractor shall indemnify and keep indemnified at all times the Owner against all such

damages and compensations and against all such damages and compensations and against all claims, damages, proceedings, costs, charges and expenses what so ever in respect thereof or in relation thereto.

51.(13) No labourer employed by the Contractor or the Sub-contractor shall, in any circumstances, be deemed to be the employees of the Owner nor can any claims or demands for payment be made from the Owner. Should the Owner have to pay any money in respect of claims or demands as aforesaid, pursuant to an order of a court/tribunal or any Government or local authority the amount so paid and the costs incurred by the Owner shall be charged to and be paid by the Contractor to the Owner and the Contractor shall not be at liberty to dispute or question the right of the Owner to make such payments. However, intimation of any such payments made by the Owner shall be made to the Contractor.

51.(14) The Contractor shall at all times take all necessary precautions to prevent any unlawful, riotous or disorderly conduct by or amongst its personnel and for the preservation of peace and protection of persons and property at (and around) the Site against the same.

51.(15) No alcohol or drugs (except prescribed drugs for medical purposes only) shall be allowed on the Site at any time whatsoever. The Contractor shall ensure that no personnel is permitted on the Site if he is under the influence of alcohol or drugs or if, in the reasonable opinion of the Contractor or the Owner, he is unfit to work. The Engineer shall have the right to test any of the personnel of the Contractor present at the Site for alcohol and drugs on a random basis.

51.(16) The Engineer or Owner shall have the right to require the removal from the Site (and from the performance of any part of the Works) of any person employed by the Contractor who in the reasonable opinion of the Engineer or Owner, is guilty of serious or repeated misconduct, is incompetent or negligent in performing the work assigned to him, or whose actions endanger the safety of himself or others or the Works or whose presence is otherwise prejudicial to good order at the Site. The cost of such removal and replacement shall be borne solely by the Contractor and the Contractor shall indemnify the Owner from and against any and all damages arising as a consequence of any such removal. The Contractor shall ensure that any person so removed is replaced as soon as reasonably practicable with a suitably qualified and competent individual.

## **52. Protection Of Trees And Shrubs**

52. Trees and shrubs designated by the Engineer shall be protected from damage during the course of the work and the earth level shall not be charged within three feet of such trees. Where necessary such trees and shrubs shall be protected by means of temporary fencing.

## **53. Guarantee**

53. All required guarantees shall be submitted to the Engineer by the Contractor at the time of signing of this Contract.

## **54. Antiquities**

54.(1) All fossils and other objects of interest or value which may be found on the Site or in excavating the same during the progress of the work shall become the property of the Owner. The Contractor shall carefully take out and preserve all such objects and shall

immediately or as soon as convenient after the discovery of such articles deliver the same into the possession of the Engineer or of the Clerk-of-Works un-cleaned and as excavated.

- 54.(2) If in the opinion of the Engineer compliance with the provisions of the preceding Sub Article has involved the Contractor in direct loss and/or expense for which he would not be reimbursed by a payment made under any other provision in this Contract then the Engineer shall ascertain the amount of such loss and/or expense, any amount from time to time so ascertained shall be added to the Contract Sum, and if an Interim Certificate is issued after the date of ascertainment any such amount shall be added to the amount which would otherwise be stated as due in such certificates.

## **55. Excepted Matters**

55. The decision, opinion, direction, certificate (except for payment) with respect to all or any of the matters under Articles 5, 9, 19, 25, 26, 36, 40 (1, 2, and 4) and 48 hereof (which matters are herein referred to as the excepted matters) by the Engineer shall be final and conclusive and binding on the Parties hereto and shall be without appeal. Any other decision, opinion, direction, certificate or valuation of the Engineer or any refusal of the Engineer to give any of the same shall be subject to any right of Arbitration and review in the same way in all respect (including the provision as to opening the reference) as if it were a decision of the Engineer under the following Article.

## **56. Arbitration**

- .01 All and any dispute, difference controversies and questions directly or indirectly arising at any time under, out of or in connection with or in relation to this Contract (or the subject matter of this Contract) including without limitation all disputes, differences, controversies, and questions relating to validity, interpretation, construction, performance and enforcement or implementation of any provisions this Contract, or alleged breach of this Contract arising between the Parties shall be referred to and settled by the Engineer in the first instance and upon being referred a dispute under this Article the Engineer shall state his decision in writing.

- .02 If the dispute is not resolved by the Engineer within thirty (30) days after one party first informs the other party in writing of the existence of the dispute, then either of these Parties shall refer the dispute to arbitration to be finally resolved. Such arbitration shall be governed by and conducted in accordance with the (Indian) Arbitration and Conciliation Act, 1996. The number of arbitrators shall be 3 (three) wherein each party to the dispute shall appoint one arbitrator and the two (2) arbitrators so appointed shall then jointly appoint a third arbitrator, who shall act as the presiding arbitrator.

The venue of arbitration shall be Ahmedabad, Gujarat, India.

- .03 The Parties agree:

- to be bound by any arbitral award or order resulting from any arbitration conducted pursuant to this Agreement;
- all proceedings in any such arbitration shall be conducted in English.
- the arbitration award made by arbitral tribunal constituted in accordance with Article 56 above shall be final and binding on the Parties and the Parties agree to be bound thereby and to act accordingly.

- the award shall be enforceable in any competent court of law.
- the award shall be in writing and shall be reasoned.

.04 When any dispute is under arbitration, except for the matters under dispute the Parties shall continue to exercise their remaining respective rights and fulfil their remaining respective obligations under this Contract.

## **57. Protection And Cleaning**

57.(1) The Contractor shall protect and preserve the work from all damage or accident providing any temporary roof, window and door coverings, boxing or other construction as required by the Engineer. This protection shall be provided for all property adjacent to the Site as well as on the Site.

The Contractor shall take full responsibility for the care of the Works or any Section or part of the Works from the Date of Commencement to Commence as defined in Article 38(1) until the Completion of Works as defined in Article 38(1) and in the event that any damage or loss shall occur to any work during such period as aforesaid from any cause whatsoever save and except the loss or damage caused by any of the Excepted Risks as defined below, the same shall be made good by and at the cost of the Contractor and to the satisfaction of the Owner. The Contractor shall also be liable for any loss or damage to the Work occasioned by it or by any of its Sub-Contractors or any of their personnel or due to reasons attributable to them in the course of any operations carried out by it or by its Sub-Contractors for the purpose of completing any outstanding work or complying with its obligations under Article 42(2) (Defects Liability Period).

57.(2) The Contractor shall properly clean the work as it progresses and shall remove all rubbish and debris from the Site from time to time as is necessary and as directed. On completion the Contractor shall ensure that the premises and/or Site are cleaned, surplus materials debris, sheds etc. removed, areas under floors cleared of rubbish, gutters and drains cleared, doors and sashes eased, locks and fastenings oiled, keys clearly labeled and handed to the Clerk-of-Works so that the whole is left fit for immediate occupation or use and to the satisfaction of the Engineer.

## **58. Tolerance**

The Contractor shall exercise every care to ensure that all structural members are sufficiently plumb and true to dimensions called for on the drawings to receive prefabricated finishing elements such as doors, windows, cabinet work, ceramic work, concrete, tiles etc. Any variation may require rectification in the structural members or may involve remaking or replacing the finishing elements, fabricated to fit into the openings or spaces, as called for on the Drawings. In general, provisions of relevant I.S. codes shall apply to decide the tolerance limit for any particular work not true to the dimension / plumb.

In case of separate Contract, the Contractor whose work does not conform to dimensions called for, shall be liable for all the expenses which may have to be incurred for rectification or replacement as may be required by the Engineer for the proper installation of the finishing elements. The Engineer's decision in this respect shall be final and binding on the Parties concerned.

## **59. Bribery**

Any commission, advantage, gift, gratuity, regard or bribe given, promised or offered by or on behalf of the Contractor or his agent or servant, or any other person on his or their behalf to any officer, servant, representative or agent of the Owner or of the Engineer or Engineer's Representative or to any person on their behalf or on behalf of any of them in relation to the obtaining or to the execution of this or of any other Contract with the Owner, may, in addition to any criminal liability which may be thereby incurred, subject the Contractor to the cancellation of this and all the other Contracts which he may have entered into with the Owner and also to the payment of any loss or damage resulting from such cancellation. The Owner shall be entitled upon a certificate in writing of the Engineer to deduct the amount so certified from any monies otherwise due to the Contractor under this or any other Contract or to recover the said amount as a debt due or partly the one and partly the other as the Owner shall deem advisable.

## **60. Declaration Against Waiver**

The condonation by the Owner or Engineer of any breach or breaches by the Contractor or a nominated Subcontractor 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 Owner's rights, powers and remedies under the contract in respect of any breach or breaches as aforesaid.

## **61. Indemnity To Owner's Agents And Engineer And Engineer's Agents**

- (1) The Contractor shall indemnify the Owner and every member, Officer, and Employee thereof and the Engineer and the Engineer's Agents and Representative and every member of his staff from any claim or demand from accident, injury, damage, loss and/or compensation of any kind whatsoever arising out of or in connection with all claims and demands which may be made against the Owner or the Engineer for or in respect of or arising out of failure by the Contractor in the performance of his obligation under any of the provisions of the Contract.
- (2) If the Owner has to pay or elects to pay any money in respect of any such claims or demands as aforesaid, the amount so paid and the cost incurred by the Owner shall be charged to and paid by the Contractor provided always that the Owner shall, if circumstances permit, give to the Contractor reasonable opportunity of examining such claims or demands before payment.

In the event of the Contractor disputing the amount of any payment (except payments made in accordance with the legal obligations or after approval by the Contractor) then the Contractor shall have the right to dispute the matter, and refer the matter to arbitration in accordance with the provisions of the Conditions of Contract.

- (3) The Contractor shall indemnify the Owner from and against any and all damages arising out of or relating to any damage to or loss of property or personal injury to or death of third parties to the extent they arise or result from any act or omission in relation to, or the performance or non-performance of, the Contract by the Contractor, or anyone for whose acts the Contractor may be liable.
- (4) The Contractor shall indemnify the Owner from and against all damages arising out of or relating to environmental damage occurring at the Site or out of pollution emanating from the property or equipment of the Contractor caused by or resulting from the performance of the Works by the Contractor or anyone for whose acts they may be liable

and the Contractor's failure to abide by the health, safety and environmental requirements under applicable laws.

- (5) The Contractor warrants that the Works shall not infringe the intellectual property rights of any other person. The Contractor shall indemnify the Owner from and against any and all damages arising out of or relating to the infringement of any such intellectual property rights in respect of the Works (or the use thereof).
- (6) The Contractor shall indemnify the Gujarat Industrial Development Corporation and the Gujarat Government from and against damages directly resulting from the performance of the Works by the Contractor, but only if and to the extent that the Contractor is legally liable for such damages.
- (7) The indemnities provided by the Contractor shall not in any way depend on, be subject to or in any way be affected or limited by the insurance coverage the Contractor may have.

#### **62. Member Of Owner's Staff, Etc. Not Liable**

Neither any member of the Owner's staff, nor the Engineer, nor any of his staff, nor the Engineer's Representative shall be in any way personally liable for the acts of obligations under the Contract, or answerable for any default or omission on the part of the Owner in the observance or performance of any of the acts, matters or things which are herein contained.

#### **63. Return Of Surplus Materials**

Notwithstanding anything to the contrary contained in any or all the Articles of this contract, where any material for the execution of the Contract is procured with the assistance of the Owner by purchases made under orders or permits or licenses issued by Government the Contractor shall hold the said materials economically and solely for the purpose of the Contract and not dispose of them without the prior written permission of the Owner and return it to the Owner, if required by the Owner, at the price to be determined by the Engineer having due regard to the condition of the materials, the price to be determined not to exceed the purchase price thereof inclusive of sales tax, octroi and other such levies paid by the Contractor in respect thereof. In the event of breach of the aforesaid condition, the Contractor shall, in addition to being liable to action for contravention of the terms of licenses or permit and/or criminal breach of trust, be liable to Owner for all moneys, advantages or profits resulting or which in the usual course would have resulted to him had the breach not taken place.

#### **64. Concurrent Delays**

In the event of delay in the work of the Contractor due to causes attributable to the Owner and also due to causes attributable to the Contractor, the Contractor shall not be entitled to make any claim on that account. Further, such delay will not be a valid reason to claim extension of time limit.

#### **65. Rate Of Progress**

If for any reason, which does not entitle the Contractor to an extension of time, the rate of progress of the works or any section is at any time, in the opinion of the Engineer, too slow to comply with the Time of Completion, the Engineer shall so notify the Contractor who shall thereupon take, within a week, such steps as are necessary, subject to the

consent of the Engineer, to expedite progress so as to comply with the Time of Completion. The Contractor shall not be entitled to any additional payment for taking such steps.

**66. Advance Payment**

An advance payment of the amount stated in the Section G - Appendix to Conditions of Contract shall following the presentation by the Contractor to the Owner of an approved Performance Bank Guarantee for the full value of advance payment and on completion of basic mobilization activities, be certified by the Engineer for payment to the Contractor. Such guarantee shall be progressively reduced by the amount repaid by the Contractor as indicated in Interim Certificates of the Engineer issued in accordance with Article 31.

The advance payment shall be repaid by way of reduction in Interim Certificates as stated in Section G - Appendix to Conditions. Such reduction shall be made in each Interim Certificate until the advance payment has been repaid in full. Provided that upon the issue of the Certificate of virtual completion of the whole of the works or upon termination under provisions of this Contract, the whole of the balance then outstanding shall immediately become due and payable by the Contractor to the Owner.

**67. Day Work**

The Engineer may, if in his opinion it is necessary or desirable, issue an instruction that any varied work shall be executed on a day work basis, the Contractors shall then be paid for such varied work under the Terms set out in the day work schedule included in the Contract and at the rates and prices affixed thereto by him in the Tender.

The Contractor shall furnish to the Engineer such receipts or other vouchers as may be necessary to prove the amounts paid and, before ordering materials, shall submit to the Engineer quotations for the same for his approval.

In respect of such of the works executed on a day work basis, a Contractor shall during the continuance of such work, deliver each day to the Engineer an exact list in duplicate of the names, occupation and time of all workmen employed on such work and a statement, also in duplicate, showing the description and quantity of all materials and Contractor's Equipment used thereon or therefore other than Contractor's Equipment which is included in the percentage addition in accordance with such day work schedule one copy of each list and statement will, if correct, or when agreed, be signed by the Engineer and returned to the Contractor.

At the time of every running bill the Contractor shall deliver to the Engineer a priced statement of the labour, materials and Contractor's Equipment, except as aforesaid, used and the Contractor shall not be entitled to any payment unless such lists and statements have been fully and punctually rendered. Provided always that if the Engineers considers that for any reason the sending of such lists or statements by the Contractor, in accordance with the foregoing provision, was impracticable he shall nevertheless be entitled to authorize payment for such work, either as day work on being satisfied as to the time employed and the labour, materials and Contractor's Equipment used on such work, or at such value therefore as shall, in his opinion be fair and reasonable.

**68. Works Or Execution To Be Deferred Temporarily**

It will be appreciated that co-ordination of work with various agencies in a complex Project is of utmost importance for smooth working and timely completion. The



requirements of the machinery and equipment erection will have to be taken into account in planning the execution of the civil works. The normal sequence of the work may have to be altered to suit erection requirements. Also it may be necessary to defer certain works such as walling in certain bays, floor finishes and concrete in ground floor slabs until after machinery erection.

Such temporary deferring of works or execution of specific items shall not entitle the contractor to any extension of time or any extra cost.

**69. Fire Precautions**

The Contractor shall conform to the regulation of controlling authority with respect to the precautions to be taken against fire hazards. Fire safety involves numerous safety issues including fire prevention, fire suppression, and emergency evacuation/response. Fire safety is everyone's responsibility.

**70. Format Of Running Bill**

The Contractor shall prepare and submit his bills in MS-excel. Soft copies and two prints of the same shall be submitted. Separate measurement sheets and abstract sheet shall be prepared for each activity as directed by the Engineer.

**71. Applicable Laws**

The Contract shall be construed and interpreted in accordance with and governed by the Laws of India.

**72. General**

72.1 Save and except as expressly provided elsewhere in this Contract all costs, expenses, charges and liabilities for the completion of the Works in accordance with the Contract and / or for the due and faithful performance and / or the fulfilment of all of the Contractor's obligations under the Contract including furnishing of bank guarantees to the Owner pursuant to the Contract shall be to the account of and be borne by the Contractor and shall be deemed to be included in the Contract Sum and the Owner shall not be liable in any manner whatsoever therefore.

72.2 The Contractor shall provide and install all necessary constructional plant, equipment and machinery required for the execution of the Works at his cost and shall use such methods and appliances for the purpose of all the operations connected with the Works which shall ensure the completion of Works within the specified time.

72.3 Whenever any claim whatsoever for the payment of a sum of money to the Owner arises out of or under this Contract against the Contractor, the same may be deducted by the Owner from any sum then due or which at any time thereafter may become due to the Contractor under this Contract and failing, that under any other contract between the owner and the Contractor or from any other sum whatsoever due to the Contractor from the owner or he shall pay the claim on demand.

72.4 The Owner further reserves the right to enforce recovery of any overpayment when detected, notwithstanding the fact that the amount of the final bill may be included by one of the Parties as an item of dispute before arbitrators appointed under Article 56 of this Contract and notwithstanding the fact that the amount of the final bill figures in the arbitration award.

- 72.5 Any approval or any approval given with changes, by the Owner, Engineer or their representative shall not relieve the Contractor or any of its obligation, responsibility and liability for the safety, correctness and performance of the Works and its obligations hereunder including drawings and design.

### **73. Contractors Representations and Warranties**

The Contractor covenants that:

- a. at all times it has exercised and will exercise the standard of skill, care and diligence of a reasonable and prudent contractor in the carrying out and completion of the Works, is fully skilled and experienced in the carrying out of works similar to the Works and has and will have the resources as are required to fully perform its obligations under this Contract for the Contract Sum;
- b. it has not used and will not use any materials for incorporation in the Works which are generally recognized as being deleterious or to be avoided in any case for the purpose for which they are to be applied;
- c. it will provide Works which shall be new and which will be suitable and fit for the purposes or uses described in this Contract;
- d. it will provide resources which shall be in (and shall be maintained in) good and safe operable condition, properly certified as required by any Government Authority and shall be operated only by suitable trained and experienced personnel;
- e. it will provide all chemicals and lubricants, special tools, start-up spare parts, initial fills and commissioning supplies necessary for the testing of the Works as provided for in the Scope of Works;
- f. it has complied with, and will at all times comply with, all applicable laws and permits relating to the Works and in the performance of the Works (including, marine navigation and operations); and
- g. it will provide such fully fitted and furnished office accommodation for use by the Owner as it may reasonably require in the manner provided in the Scope of Works;

The Contractor further warrants and represents that:

- a. the Works are and shall be free from Defects;
- b. each item of the Works will be entirely of proven design, modern, brand new and unused;
- c. the Works (when complete) will achieve the performance criteria and shall comply with the Project Specifications and the Scope of Works;
- d. the Works (when complete) will comply with the requirements of this Contract for the Defects Liability Period;
- e. the Works (when complete) shall have been constructed in accordance with the Drawings and Specifications and there will be no departure from such Drawings and Specifications;
- f. no infringement of any Intellectual Property Rights of any kind, whether in India or elsewhere, has resulted or will result from the performance of this Contract;
- g. it has the financial, managerial and technical capability to carry out the Works in accordance with the provisions of this Contract and shall apply all such financial, managerial and technical capabilities in completing the Works to the standard of a reasonable and prudent contractor and in accordance with the requirements of this Contract;
- h. it has and will provide experienced personnel with knowledge in the planning, design, engineering, manufacture, procurement, load out and transportation, construction, erection, installation, testing, pre-commissioning and completion of works similar to the Works and that it has knowledge of and will continue, as a reasonable and

- prudent contractor, to stay abreast of all changes in all applicable laws, codes, standards and work practices to perform the obligations of this Contract in India;
- i. the Works and all resources shall be kept clear of all liens and encumbrances of any kind whatsoever attributable to Contractor; and
  - j. it shall interact with all third parties necessary to carry out the Works in accordance with the requirements of the Contract.

#### **74. Set-Off**

The Owner may set-off any amount which the Contractor owes to the Owner by way of debt (whether actual or contingent) pursuant to any contractual or other arrangement whatsoever (including this Contract) in any currency and in any jurisdiction, against any amount which the Owner may be liable to pay to the Contractor pursuant to this Contract. For the purpose of such set-off, the Owner may convert any such amount owing by the Contractor into any currency in which the obligation of the Owner is to be paid. If any obligation of the Contractor is unliquidated or otherwise unascertained, the Owner may set-off an amount estimated by it in good faith on account of such obligation, without prejudice to the obligation of the Contractor to pay or account for any shortfall.

#### **75. Precedence**

The Contractor hereby warrants and shall continue to warrant, from the Effective Date until the end of the Defects Liability Period, that no other client or customer of the Contractor (whether now or at any time prior to the issue of the Completion Certificate under Article 42 shall receive any precedence over the Owner either in the provision of the resources and performance of the Works or in the timely, successful and effective performance and completion of the Works in accordance with this Contract. If any conflict or issue of priorities arises between the Works under this Contract and any other subsequent commitments with respect to projects being undertaken by the Contractor, the Contractor shall resolve such conflict or issue in favour of the Owner for the benefit of the Works. The Contractor shall at all times act in such a way and make recommendations that it, in good faith, believes are in the best interests of the Works. The Contractor confirms that it has not submitted any other bid package in respect of any other works in India and confirms that any commitments with respect to any works in India will not in any way affect its performance under this Contract.

#### **76. Independent Contractor**

The Contractor in performing its obligations under this Contract shall at all times act as an independent contractor on its own account and shall have no authority to act as the agent of the Owner. Neither the Contractor nor any Subcontractor nor any person employed by the Contractor nor by any Subcontractor (whether directly or indirectly) in respect of the Works shall be, or be deemed to be, an employee or agent of the Owner and shall have no authority to bind the Owner in any manner whatsoever. All debts, liabilities and obligations of any kind imposed upon or incurred by the Contractor in the performance of this Contract shall, as against the Owner, be the debts, liabilities and obligations of the Contractor.

#### **77. Environment and Pollution**

At all times in relation to the performance of the Works, the Contractor shall take all such measures as may be deemed necessary in order to comply with applicable laws and prevent any environmental damage at the Site or to any of the areas (including the sea and the river) around the Site, including any discharge from any source, whatsoever into the atmosphere, the ground or any body of water including the sea, the river or sub-surface reservoir which might cause pollution or might be deleterious to life or the environment in breach of applicable laws.

Such discharge may include (but not be limited to) smoke, dust, oil or other atmospheric, ground or liquid pollutants.

At all times prior to the Completion Certificate issued by the Engineer under Article 42 (3) (and thereafter at all times during which it performs any Works pursuant its obligations under the Defects Liability Period or when present on or near the Works Site), the Contractor shall have full regard for the security of the Works Site and safety of all persons present at the Works Site in accordance with:

- a. applicable laws;
- b. the standard of a reasonable and prudent contractor;
- c. such further requirements as set forth in the Scope of Works.

Without prejudice to the generality of the foregoing, the Contractor shall take all appropriate steps, in accordance with the standard of a reasonable and prudent contractor, to warn and inform all other relevant persons (including Government Authorities, service providers, local parties, third party vessels and their owners) of the scope, nature and location of the Works being carried out so that such persons and marine craft can avoid, co-ordinate or mitigate their presence at, certain areas within the Works Site at certain times.

If the Contractor fails to take any measure in relation to Site security or safety required pursuant to the provisions of this Article, the Owner or Engineer may take any such measures in which case the Owner may, at its option, recover the costs incurred by Owner or Engineer in taking action pursuant to this Article from the Contractor by either (a) reducing the Contract Sum by an amount equal to such costs, or (b) setting-off such costs from any amounts due (or which become due) to the Contractor under this Contract.

## **78. Amendments and Waivers**

The Parties may not amend or waive this Contract except pursuant to a written instrument executed and delivered by the party against whom any amendment or waiver is sought to be enforced.

No failure or delay by the Owner in exercising any right or remedy or requiring the satisfaction of any condition under this Contract shall operate as a waiver or estoppel of any right, remedy or condition under this Contract. A waiver made by the Owner in writing on one occasion is effective only in that instance and only for the purpose that it is given and is not to be construed as a waiver on any future occasion. To the extent that any course of dealing, act, omission, failure or delay in exercising any right or remedy by the Owner under this Contract constitutes the election of an inconsistent right or remedy, that election does not constitute a waiver of any right or remedy by the Owner or limit or prevent the subsequent enforcement of any contract provision by the Owner.

No single or partial exercise of any right or remedy by the Owner under this Contract precludes the simultaneous or subsequent exercise of any other right or remedy.

Except as otherwise expressly provided herein, the rights and remedies of the Owner set forth in this Contract are not exclusive of, but are cumulative to, any rights or remedies of the Owner now or subsequently existing at law, in equity, or by statute.

## **79. Severability**

If any provision of this Contract is determined to be invalid, illegal or unenforceable, the remaining provisions of this Contract remain in full force, if the essential terms and conditions of this Contract for each Party remain valid, binding, and enforceable.

## **80. Third Party Beneficiaries**

Except to the extent otherwise expressly provided for in this Contract, this Contract does not and is not intended to confer any rights or remedies upon any person other than the signatories.

## SECTION - E: FORM OF PERFORMANCE BANK GUARANTEE

This Deed of Guarantee ("Bank Guarantee"), made on this \_\_\_\_ day of \_\_\_\_\_, 2018 is executed by \_\_\_\_\_ Bank having its registered office at \_\_\_\_\_ (hereinafter referred to as the "Bank" which expression shall unless repugnant to the context or meaning thereof mean and include its successors, executors, administrators and assigns) in favour of Fanidhar Mega Food Park Pvt. Ltd., having its registered office at 10/11, Second Floor, Orchid The Shopping Mall, Opp. Thaltej Lake, Thaltej, Ahmedabad, Gujarat-380059 (hereinafter referred to as "Owner" which expression shall unless repugnant to the context or meaning thereof mean and include its successors, executors, administrators and assigns)

At the request of \_\_\_\_\_ having its registered office at \_\_\_\_\_ (hereinafter referred to as the "Contractor" which expression shall unless repugnant to the context or meaning thereof mean and include its successors, executors, administrators and assigns).

WHEREAS by an Agreement dated..... the Contractor has contracted with the Owner to complete Civil, Structural & Infrastructural Works for the Owner at Mudarda Village, Mehsana, Gujarat ("Agreement") for a contract sum of Rs. \_\_\_\_\_ (Rupees \_\_\_\_\_ only) and as per the terms and conditions of the Agreement.

AND WHEREAS, in terms of the provisions of the Agreement, the Contractor is required to secure its obligations under the Agreement by way of a bank guarantee for an amount of Rs. \_\_\_\_\_ (Rupees \_\_\_\_\_ only) representing 5% of the contract sum.

AND WHEREAS the Contractor has requested the Bank to provide a bank guarantee directly to the Owner for a value of Rs. \_\_\_\_\_ (Rupees \_\_\_\_\_ only) on behalf of the Contractor and the Owner has agreed to accept this bank guarantee.

AND WHEREAS the Bank has agreed to give the bank guarantee for an amount of Rs. \_\_\_\_\_ (Rupees \_\_\_\_\_ only) to the Owner on the following terms and conditions:

### NOW THESE PRESENTS WITNESSETH AS UNDER:

1. In consideration of the aforesaid premises, and subject to the conditions appearing hereunder, we the Bank hereby undertake to pay within seven (7) clearing working days to the Owner upon receipt of demand in writing from the Owner for a sum as may be quantified by the Owner under this Bank Guarantee not exceeding Rs. \_\_\_\_\_ (Rupees \_\_\_\_\_ only), as may be demanded by the Owner as a consequence of loss or damage caused to or suffered by the Owner as a result of a breach of the Agreement by the Contractor.
2. We, the Bank do hereby guarantee and undertake to pay the Owner on demand any and all monies to the extent of Rs. \_\_\_\_\_ (Rupees \_\_\_\_\_ only) without any delay, demur, reservation, contest, recourse or protest and/or without any reference to the Contractor.
3. Any such demand made by the Owner shall be conclusive and binding notwithstanding any difference between the Owner and the Contractor or any dispute pending before any court, tribunal or any other authority.

4. The Owner and Contractor shall be at liberty to mutually vary or alter any of the terms and conditions of the Agreement without affecting the provisions of this Bank Guarantee.
5. This Bank Guarantee shall not be affected in any manner by any change in constitution of any of the parties hereto.
6. This Bank Guarantee shall not be revoked during the period of its validity unless prior discharge is given by the Owner.
7. The Bank's liability under this Bank Guarantee shall not exceed Rs. \_\_\_\_\_ (Rupees \_\_\_\_\_ only).
8. This Bank Guarantee shall be valid till \_\_\_\_\_ ("Validity Period").
9. The Bank's liability shall automatically expire after three (3) months of the expiry of the Validity Period irrespective of the fact that the original Bank Guarantee is returned to the Bank or upon prior discharge by the Owner. The Bank undertakes to extend this Bank Guarantee beyond the Validity Period as required by the Owner upon receipt of request to that effect in writing by the Owner.

In witness whereof, the Bank, through its authorized officer, has hereunto set its hand and stamp on

This .....day of.....  
Two Thousand Seventeen

.....

Witness

## **SECTION - F: SPECIAL CONDITIONS OF CONTRACT**

### **1.00 Trade or Brand Names**

- (1) Where in the Contract any item of work is described by reference to:
  - (a) Any trade or brand name or catalogue number,
  - (b) Any proprietary or patent material, fitting, installation, equipment or article to be Obtained from a specified or approved manufacturer or supplier, that description is intended to indicate the type, quality, appearance and method of construction required and item of a standard similar and equal thereto may, subject to the specific approval of the Engineer be submitted for the item so described.

### **2.00 Use of Site**

In particular the following provisions shall be deemed to apply to the possession and use of the Site.

- (1) The lands and other places outside the Site which are the property of or under the control of the Owner shall be used strictly in accordance with the instructions of the Engineer or Clerk of Works.
- (2) The Contractor shall at any time move any vehicle, machine, vessel or any other obstruction within his control that may be required by the Clerk of Works to be moved such things or such obstructions promptly on instructions being given and at his own cost unless the Clerk of Works decides otherwise.
- (3) The Contractor shall maintain access for the inspection, operation and maintenance of any of the plant or the Works belonging to the Owner, which lie within the Site or elsewhere.
- (4) The Contractor shall not use any portion of the Site for any purpose not connected with the Works unless prior written permission of the Clerk of Works shall have been obtained.

### **3.00 The Contractor to Allow for**

- (1) Water and Electric Power Supply

Electric Power Supply and Water required for construction or any other purpose for execution of this work shall be provided by the Owner to the Contractor at one point within the plot premises on chargeable basis. The Contractor shall make further arrangement for local distribution and installation of meter at his own cost. The contractor shall be permitted to set up the labour camp on plot premises.

Except for the provision herein stated the provisions relating to Water and Electric Power Supply stated in Article 24 of the General Conditions of Contract shall apply.

- (2) Testing

The Contractor shall allow for sampling, preparation, transportation, testing fees etc. for material testing required for the Works.



### (3) Final Cleaning on Completion

The Contractor shall remove from Site of works all rubbish, clean all buildings, floors, walls, glazing, soffits of stains, marks of mortar and cement and other marks left by him or Sub-Contractors. He shall flush out drains, plumbing installations and leave all parts of the Works clean and free from waste material and rubbish on completion.

The Contractor shall regularly clean and cart away rubbish and waste material from the Site of works.

## **4.00 Drawings**

### 4.01 Tender Drawings

The Drawings, which describe the general nature of Works, are listed in Section M. These are Tender Drawings. However, there may be substantial variation in these and detailed execution drawings issued to the Contractor from time to time. Such variations will not vitiate the Contract.

### 4.02 Further Drawings and Instructions

The Engineer shall have full power and authority to supply to the Contractor from time to time, during the progress of the works, such further drawings and instructions as shall be necessary for the purpose of the proper and adequate execution and maintenance of the Works. The Contractor shall carry out and be bound by the same.

### 4.03 Custody of Drawings

The drawings shall remain in the sole custody of the Engineer, but two copies thereof shall be furnished to the Contractor free of charge. The Contractor shall provide and make at his own expenses any further copies required by him. At the completion of the Contract the Contractor shall return to the Engineer all drawings provided under the Contract.

### 4.04 One copy of Drawings to be kept on Site.

One copy of the Drawings, furnished to the Contractor as aforesaid, shall be kept by the Contractor on the Site and the same shall at all responsible times be available for inspection and use by the Engineer and by any other person authorized by the Engineer in writing.

### 4.05 Disruption of Progress

The Contractor shall give written notice to the Engineer whenever planning or progress of the Works is likely to be delayed or disrupted unless any other drawing or order, including a direction, instruction or approval, is issued by the Engineer within a reasonable time. The notice shall include details of the drawings or order required and of why and by when it is required and of any delay or disruption likely to be suffered if it is late.

## **5.00 Fire Precautions**

The Contractor shall conform to the regulations of the Owner and any other controlling authority in force at the Site of the Works with respect to the precautions to be taken against fire hazards.

**6.00** No change, deviation or modification in Contract Document is permissible without the Engineer's written permission.

**7.00 Cost of samples / testing**

All samples for testing of sand, aggregate, cement, reinforcing bars, concrete timber and other materials used in construction of the works and services shall be supplied by the Contractor free of cost. All necessary arrangement for making samples, test specimen, transportation to the testing laboratory etc. shall be made by the Contractor at his own cost.

The Contractor shall prepare test specimens for different types of plaster, painting etc. at his own cost for approval by the Engineer.

**8.00 Priority of Contract Documents**

In case of discrepancy between any of the General Conditions, the Bill of Quantities, the Special Conditions and the General Specifications on Material & Workmanship, Item Specifications (as mentioned in Section KA Preamble of Volume 2), Bill of Quantities item description & Drawings, the order of precedence shall be as follows:

- (i) Drawings
- (ii) Item Specifications (as mentioned in Section KA Preamble of Volume 2)
- (iii) Bill of Quantities item description
- (iv) Technical Specifications (as mentioned in Section J of Volume 2)
- (v) Special Conditions
- (vi) General Conditions

Detailed drawings shall be followed in preference to small-scale drawings and figured dimensions in preference to scaled dimensions. If no specifications are given for an item, the specifications of Indian Standard Institution will be followed.

**9.00 Approval of the Engineer for specialized agencies**

The Contractor shall take prior approval of the Engineer while selecting plumbing and electrical agencies if the work related to these agencies is in his Scope of Work, and for which no nominated Subcontractors have been appointed.

**10.00** Necessary permission with regard to drainage and electrical connections shall be arranged by the Contractor, if plumbing and electrical work are within his scope or that of his nominated Subcontractor.

**11.00** The Contractor shall inform the Engineer about his management and staff structure for the project including the name of the Project-in-Charge.

**12.00** The Contractor shall submit to the Engineer daily and fortnightly reports in the format approved by the Engineer. These reports will show the work plan for the future period and the progress achieved.

**13.00** The Contractor shall submit to the Engineer samples of materials/products for approval sufficiently in advance of incorporating the same in the works.

**14.00** The Contractor shall not be entitled to any compensation for any loss suffered by him on account of delays in commencing or executing the work, whatever the cause of delay, and the Owner shall not be liable for any claim in respect thereof.

**15.00** Time allowed for carrying out the Works as stated in Section G, Appendix to Conditions of Contract shall be strictly observed by the Contractor. The work throughout the Contract Period shall be provided with all due diligence and if the Contractor fails to complete the Works within the Contract Period he shall be liable to pay reasonable pre-estimated genuine liquidated as given in Section D, Article 41.

#### **16.00 Co-ordination with Other Contractors**

The Contractor shall submit the details of Works Program to the Engineer who will co-ordinate with the Erection Program separately submitted to him by the Erection Contractor. Such co-ordination of Civil, Structural & Infrastructural Works program shall be agreed between the Engineer, Contractor and the agreed program shall then be mutually binding on Erection and Civil Works Contractors.

#### **17.00 Working Conditions**

**17.01** The Contractor shall commence the Work promptly upon receiving written notification from Engineer and thereafter shall maintain sufficient work force on the job to complete the works within the time specified by Engineer.

**17.02** Engineer reserves the right to modify the portions of works at any time, in order to co-ordinate all construction work to best advantage.

Such modifications shall be given to the Contractor's field supervisor, in writing.

The Contractor's field supervisor shall notify Engineer in writing, if he finds that installation will delay beyond the date of schedule. The Contractor shall time his work so as to co-operate regarding working space and not to interfere with other working.

#### **18.0 Safety Code**

**18.01** In general, the Contractor shall adhere to safe construction practice and guard against hazardous and unsafe working conditions and shall comply with Owner's safety rules as set forth herein and as per applicable laws.

A. The Contractor shall maintain first aid facilities for its employees and those of its Subcontractors. The Contractor shall also make arrangement for ambulance service and for the treatment of industrial injuries. Name of those providing these services shall be furnished to Engineer-in-Charge prior to start of construction and their telephone number shall be prominently posted in Contractor's office.

B. All critical injuries shall be reported promptly to Engineer-in-charge and a copy of the Contractor's report covering each personal injury requiring the attention of a physician shall be furnished to Owner.

C. The Contractor shall strictly comply with all statutory requirements in respect of all industrial injuries.

D. Carrying/striking of matches, lighters within the work area, smoking within the work area, tank farm or other areas is strictly prohibited. Violator of the 'No Smoking' rules shall be discharged immediately. Within the operations area, no hot work shall be

permitted without valid gas safety/fire permits. The Contractor shall be held liable and responsible for all lapses of his sub-contractors/employees in this regard.

- E. Safety provisions shall be brought to the notice of all concerned by display on a Notice board at a prominent place at the work spot. Persons responsible for ensuring compliance with the safety code shall be named therein by the Contractor. The Contractor shall appoint at least two qualified Safety Engineers and One Safety Manager at Site for this purpose for the entire duration of Work. These safety personnel shall have adequate experience of working in similar conditions.
- 18.02 To ensure effective enforcement of the rules and regulations relating to safety precautions, arrangements made by the Contractor shall be open to inspection by the Engineer-in-charge or his representatives. Non-compliance of this Safety Code or any misconduct regards to safety, by the Contractor or his representatives shall be dealt with firmly by the Engineer-in-Charge by way of immediately stopping the Work. Such stoppage of Work shall not entitle the Contractor for any extension of Time and / or any extra Cost.
- 18.03 The Contractor shall erect and maintain barricades to protect or guard the excavation areas, hoisting areas, any other hazardous areas, areas adjacent to Owner's existing property and any such area deemed appropriate for such protection by the Engineer In charge. The Contractor shall provide all necessary fencing/barricades and lights to protect public from accidents and shall be bound to bear expenses of defence of every suit, action or other proceedings at law that may be brought by any person for injury sustained owing to neglect of the above precautions and to pay any damages and costs which may be awarded in any such suit, action or proceedings to any such person or which may, with the consent of the Contractor, be paid to compromise any claim by any such person. The Contractor's employees and its Sub-Contractors shall be acquainted with barricading practises and shall respect all such provisions. Barricade and hazardous areas adjacent to but not located in normal routes of travel shall be marked by red flasher lanterns at night.
- 18.04 Notwithstanding this Safety Code, the Contractor is not exempted from the operation of any other Act or Rule in force.
- 18.05 In addition to this Safety Code, the Contractor shall abide by the safety code provisions as per C.P.W.D. safety code framed from time to time.
- 18.06 The contractor shall arrange to obtain valid gate passes for his men and equipment from the concerned authorities of the Project.
- 18.07 No man / material / equipment not covered by valid passes shall be permitted with the Project area and no material / equipment shall be permitted to be taken out of the Project area, unless the written permission of the Engineer / Engineer in-Charge.
- No materials at the Site shall so stacked or placed as to cause danger or inconvenience to any person or the public.
- 18.08 All necessary personal safety equipment as considered adequate by the Engineer-in-charge shall be available for use of persons employed on the Site and shall be maintained in a condition suitable for immediate use. Contractor shall take adequate steps to ensure proper use of equipments by those concerned.
- a) Workers employed on mixing asphaltic materials, cement and lime mortars / concrete shall be provided with protective footwear and protective gloves.

- b) Workers engaged in handling any material, which is injurious to eyes shall be provided with protective goggles.
- c) Workers engaged in welding works shall be provided with welder's protective-shields.
- d) Stone breakers shall be provided with protective goggles and protective clothing and seated at sufficiently safe intervals.
- e) When workers are employed in sewers and manholes, which are in use, the Contractor shall ensure that manhole covers are opened and manholes are ventilated at least for an hour before workers are allowed to get into them. Manholes so opened shall be cordoned off with suitable railing and provided with warning signals or boards to prevent accident to public.
- f) The Contractor shall not employ women / men below the age of 18 and women on the work. Whenever women / men above the age of 18 are employed on the work of lead painting, the following precautions shall be taken:
  - i) Paint containing lead or lead products shall not be used except in the form of paste or ready to use liquid.
  - ii) Suitable face masks shall be supplied for use by workers when paint is applied in the form of spray or when a surface having lead paint is dry rubbed and scraped.
  - iii) Overalls shall be supplied by the Contractor to workmen and adequate facilities shall be provided to enable working painters to wash during and on cessation of work.
- g) Workers required to work at higher elevations shall be provided with safety belts and shall be instructed not to work without wearing the Belt.
- h) Good quality safety helmets shall be provided to Workers posted at Site of operations and Contractor will take adequate measures to make usage of these helmets mandatory.

#### 18.09 **Excavation and Trenching**

All trenches, 1.5 meters or more in depth, shall at all times be supplied with at least one ladder for each 30 meters in length or fraction thereof. Ladder shall be extended from bottom of trench to at least 1 meter above surface of the ground. Sides of a trench, which is 1.5 meters or more in depth shall be stepped back to give suitable slope, or securely held by timber bracing so as to avoid the danger of sides getting collapsed. Excavated material shall not be placed within 1.5 meters of edge of trench or half of the depth of trench, whichever is more. Cutting shall be done from top to bottom. Under no circumstances shall undermining/ undercutting be done.

#### 18.10 **Demolition**

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

- a) All roads and open areas adjacent to the work Site shall either be closed or suitably protected. Adequate signage shall also be provided by the Contractor to inform about the ongoing dismantling.
  - b) No electric cable or apparatus, which is liable to be a source of danger or a cable or apparatus used by operator, shall remain electrically charged.
  - c) All practical steps shall be taken to prevent danger to persons employed, from risk or fire or explosion or flooding. No floor, roof, or other part of a building shall be so overloaded with debris or materials as to render it unsafe.
- 18.11 Suitable scaffolds, of sound material having adequate strength and in proper condition, shall be provided for workmen for all works that cannot be safely done from the ground or from solid construction except such short period work as can be done safely from ladders. When a ladder is used an extra labourer shall be engaged for holding the ladder and if the ladder is used for carrying materials as well, suitable footholds and handhold shall be provided on the Ladder and the ladder shall be given an inclination not steeper than  $\frac{1}{4}$  to 1 ( $\frac{1}{4}$  horizontal and 1 vertical). Scaffolds shall not be overloaded and so far as practicable, the load shall be evenly distributed. Before installing the lifting gear on scaffolds, special precaution shall be taken to ensure strength and stability of the scaffolds. Scaffolds shall be periodically inspected by a competent person. Before allowing a scaffold to be used by his workman, the Contractor shall, whether the scaffold has been erected by his workmen or not, take steps to ensure that it complies fully with the regulations herein specified.
- 18.12 Scaffolding or staging more than 3.25 meters above the ground or solid construction, swung or suspended from an overhead support or erected with stationary support, shall have a guard rail properly attached, bolted, braced and otherwise secured at least 1 meter high above the floor or platform of such scaffolding or staging and extending along the entire length of the external side and ends thereof with only such openings as may be necessary for the delivery of materials. Such scaffolding or staging shall be so fastened as to prevent it from swaying from the building or structure.
- 18.13 Working platform, gangways, and stairways shall be so constructed that they do not sag unduly or unequally, and if height of a platform or gangway or stairways is more than 3.25 meters above ground level or solid construction, it shall be closely boarded, have adequate width and be suitably fenced, as described in 12 above.
- 18.14 Every opening in floor of a building or in a working platform shall be provided with suitable fencing or railing having a minimum height of 1 meter to prevent fall of persons or materials.
- 18.15 Safe means of access shall be provided to all working platform and other working places. Every ladder shall be securely fixed. No portable single ladder shall be over 9 meters in length. Width between side rails in a rung ladder shall in no case be less than 30 cm. for ladders up to and including 3 m. in height. For longer ladders, this width shall be increased at least 6 mm. for each additional 30 cm. of length. Uniform step spacing shall not exceed 30 cm.
- 18.16 All scaffolds, ladders and other safety devices mentioned or described herein shall be maintained in a safe condition and no scaffold, ladder or equipment shall be altered or removed while it is in use.
- 18.17 When persons are employed on a roof, where there is danger of falling from a height exceeding 3.25 m., suitable precaution shall be taken to prevent the fall of persons or

material. Suitable precautions shall also be taken to prevent persons being struck by articles, which might fall from scaffolds or other working places.

18.18 Use of hoisting machines and tackles including their attachments, anchorage and supports shall conform to the following:

- (a)
  - i. These shall be of good mechanical construction, sound material and adequate strength and free from patent defects and shall be kept in good repair and in good working order.
  - ii. Every rope used in hoisting or lowering materials or as a means suspension shall be of durable quality and adequate strength, and free from patent defects. Health of all such ropes shall be periodically checked by a competent person.
- (b) Every crane driver or hoisting appliance operator shall be properly qualified and no person under the age of 21 years shall be in charge of any hoisting machine including any scaffold winch or giving signals to operator.
- (c) In case of every hoisting machine and for every chain ring hook, shackle swivel and pulley block used in hoisting or lowering or as means of suspension, safe working load shall be ascertained by adequate means. All such equipments shall be plainly marked with safe working load. In case of a hoisting machine having a variable safe working load, each safe working load and the conditions under which it is applicable shall be clearly indicated. No equipment or part thereof shall be loaded beyond safe working load except for the purpose of testing.
- (d) In case of a departmental machine, safe working load shall be notified by the Engineer-in-charge. As regards Contractor's machines, the Contractor shall notify safe working load of each machine to the Engineer-in-charge whenever he brings it to Site of work and get it verified by the Engineer-in-charge.
- (e) Heavy equipment with rotating superstructure, such as backhoes and power shovels, shall be guarded in such a manner that rotation and use shall not present a danger to individuals or infringe into any traffic lane.

18.19 Motors, electric wiring and other dangerous parts of hoisting equipments shall be provided with efficient safeguards. Hoisting equipments shall be provided with such means as shall reduce to the minimum risk of accidental decent of load. Adequate precautions shall be taken to reduce to the minimum risk of any part of a suspended load becoming accidentally displaced.

18.20 When workers are employed on electrical installations, which are already energised, insulating mats, working apparel such as gloves, sleeves and boots as may be necessary, shall be provided. Workers shall not wear any rings, watches and carry keys or other materials, which are good conductors of electricity.

18.21 Temporary electrical connections made at Site to energise the Construction equipments/ machinery shall be executed and maintained by a qualified Electrician. These connections shall have all necessary safeguards and shall be protected from Weather.

- 18.22 When work is done near any place where there is risk of drowning, all necessary equipments shall be provided and kept ready for use. All necessary steps shall be taken for prompt rescue of any person in danger.
- 18.23 Adequate provision shall be made for prompt first aid treatment of any injury likely to be sustained during the course of the work. One of the Contractor's staff shall be trained for this purpose.
- 18.24 Post emergency telephone numbers and locations of facilities including, but not limited to, hospitals, physicians, police, fire, and emergency medical services, in conspicuous locations at the job Site and at all telephone locations.
- 18.25 Actions to be taken during emergencies should be discussed regularly with the Contractor's supervisory personnel and at safety meetings.
- 18.26 Secure compressed gas cylinders in upright position at all times. Valve caps shall be in place when not in use. They shall be transported and stored according to Federal and state standards. Moving compressed gas cylinders by crane is prohibited, unless cylinders are capped and secured in an approved carrying device.
- 18.27 Appropriate warnings, signs and instructional safety signs shall be conspicuously posted where necessary. In addition, a properly certified flagger shall control the moving of motorized equipment in areas where the public might be endangered.
- 18.28 Penalty shall be implied to the contractor if fails to follow the general safety guidelines. The penalty shall be decided with the contractor on mutual basis depending on the safety violation.

#### **19.00 Works or Execution to be deferred temporarily**

It will be appreciated that co-ordination of work with various agencies in an Industrial project such as this is of utmost importance for smooth working and timely completion. The normal sequence of the work may have to be altered to suit erection requirements. Also it may be necessary to defer certain works such as walling in certain bays, floor finishes and concrete in ground floor slabs until after erection of the Structure and the machinery.

Such temporary deferring of works or execution of specific items shall not entitle the contractor to any extension of time or any extra cost.

#### **20.00 Examination of Work before Covering Up**

- 20.01 No work shall be covered up or put out of view without the approval of the Engineer and the Contractor shall afford full opportunity for the Engineer to examine and measure any work which is about to be covered up or put out of view and to examine foundations before permanent work is placed thereon. The Contractor shall give due notice to the Engineer whenever any such work or foundations is or are ready or about to be ready for examination and the Engineer shall, without unreasonable delay, unless he considers it unnecessary and advises the Contractor accordingly, attend for the purpose of examining and measuring such works or of examining such foundations.

#### **20.02 Uncovering and Making Openings**

The Contractor shall uncover any part or parts of the works or make openings in or through the same as the Engineer may from time to time direct and shall reinstate and



make good such part or parts to the satisfaction of the Engineer. If any such part or parts have been covered up or put out of view after compliance with the requirement of sub Article (1) of this Article and are found to be executed in accordance with the Contract, the expenses of uncovering, making openings in or through, reinstating and making good the same shall be borne by the Owner, but in any other case all cost shall be borne by the Contractor.

## **21.00 Records**

The Contractor shall, at his own cost, keep all records concerning works and progress of construction. He shall also record daily weather condition.

## **22.00 Temporary Works**

### **22.01 Site Area**

The Contractor shall provide constantly available labour, transport, and materials to maintain as directed by the Engineer the cleanliness and tidiness of the Site and to attend to the protection and temporary covering and barricading of open excavations, trenches, pits and other hazards to safety.

### **22.02 Contractor's Site Office**

The Contractor shall provide and maintain, clean and tidy, an office on the Site for accommodation of his Agent and Site Staff and such office shall be open at all reasonable hours to receive instructions, notices or other communications. This office is to be provided with a telephone.

### **22.03 Notice Board**

The Contractor shall provide and maintain one notice board for the Site consisting of a timber framed black-board panel size about 2.50 m x 2.50 m all painted with two coats white oil paint back and front and supported 1.20 m above the ground and fixed in concrete foundations.

The board shall be lettered by a skilled sign writer to include:-

- i) The Project Name
- ii) The Owner's Name
- iii) The Engineer's Name and Address
- iv) The Contractor's Name and Address

A large scale layout is to be submitted for approval before manufacture. No advertising material other than the above shall be permitted.

The sitting and layout of Sub-Contractors and/or manufacturers' boards are subject to the approval of the Engineer.

### **22.04 Other Facilities for Engineer**

- (1) Concrete Testing Equipment

The Contractor shall provide equipment for on Site testing of soil, aggregates and concrete as required by the Engineer.

(2) Labour and Materials

The Contractor shall allow for providing such labour, materials, and transport as the Engineer may require to assist him in carrying out tests and checks on materials and workmanship and setting out and measurement of the Works.

(3) Progress Photographs

The Contractor shall provide to the Engineer each month color photographs showing work in progress. The times and positions from which the photographs are to be taken shall be as directed by the Engineer. Soft copy of the same in a CD shall be provided with the description of the view point and the date of photographs typed on the back.

(4) Office for the Client & the Engineer (DELETED)

### **23.00 Price Schedule**

The tenderer shall complete the Price Schedule (Section KC), sign and attach the same to this Tender.

The cost of all temporary work should be included in the cost of permanent works. No separate price is payable for the temporary works.

### **24.00 Engineer's Power to Waive Contractor's Obligation.**

Neither the Engineer, Clerk of Works, nor any other employee, assistant or agent of the Engineer, Clerk of Works shall have any power to waive any of the obligations of the Contractor under this Contract including but not limited to those for the finished good and suitable material nor for performing the works of highest quality, fitness for purpose, and good workmanship.

Irrespective of anything contained anywhere the Owner shall have overriding power over the Engineer in all respect and in all manners. The Engineer may seek rectification alteration change, reconstruction etc. of the proposed construction in accordance with his requirements.

### **25.00 Dissolution/ Change in Constitution**

When the Contractor is a partnership firm prior approval in writing from the Owner shall be obtained before any changes are made in the constitution of the firm. When the Contractor is a Company, prior approval of the Owner is required before dissolution/ change in constitution of holding of the Company. Where the Contractor is an individual or a Hindu undivided family business concern, such approval as aforesaid shall, likewise be obtained before such Contractor enters into any agreement with other parties. After prior approval here under, the reconstituted firm would have the right to carry out the work hereby undertaken by the Contractor. In either case if prior approval is not obtained, the contract shall be deemed to have been violated and the action and consequence shall ensue as provided in Article 48.

### **26.00 Right of Recovery of Payments made by the Owner**

In the event that the Owner is directed to pay any compensation/ money in respect of any such claims or demands as aforesaid, the amount so paid and the cost incurred by the Owner shall be charged to and paid by the Contractor. The Contractor shall not

be at liberty to dispute or question the right of the Owner to make such recoveries from any amount due to the Contractor, notwithstanding the same may have been made without his consent or authority or in law or otherwise to the contrary.

#### **27.00 Works in Monsoon and De-watering**

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

During monsoon and other periods, it shall be the responsibility of the Contractor to keep the construction work Site free from water at his own cost.

#### **28.00 Setting Up of Field Laboratory**

The Contractor shall set up a field laboratory at the Site (at convenient location as approved by Owner) at his own expense and should have equipment listed below:

- Field CBR Apparatus
- Compaction Set for Earth filling
- Sieve Analysis
- Cube Test
- Slump Test

#### **29.00 Responsibility for the Condition of the Goods**

The condition of the goods from a quality perspective is the responsibility of the Contractor until the contract is complete and signed off by the owner.

**30.00** Unless otherwise specified, all the materials supplied by the Owner shall be transported by the Contractor from the Owner's store/yard within the site to his location of the Work with due care and no extra cost to the Owner.

**31.00** The contractor shall obtain all permits/licenses and pay for any and all fees required for the inspection/approval and commissioning of their installation.

#### **32.00 Materials listed below may be supplied free of Cost by Employer (Deleted)**

32.01 Materials listed below may be supplied free of cost by Employer at Employer's go down. The contractor shall make his own arrangement for loading, transporting and unloading of materials supplied by Employer to the worksite.

##### **Materials**

a) Ordinary Portland Cement

32.02 The Contractor shall co-operate with Employer with regard to stacking/storing of materials in a proper way and necessary protection as required and instructed by Employer or the Engineer shall be provided. The Contractor shall make his own arrangement for measuring, counting, and weighing of materials supplied by Employer before taking delivery of the same and joint records shall be maintained. The Contractor shall bring to the notice of Employer less weight and/or quality of these materials, if any. For the quality of cement, contractor at his own cost shall carry out the physical tests like fineness, soundness, setting time of the cement, etc. as per IS: 269. Contractor at his own cost shall provide godown for storing of cement as well as other construction materials supplied by Employer (minimum 2000 bags capacity) and he shall not refuse

acceptance of delivery of cement. Employer shall not be liable for any claims or complaints whatsoever in respect of quantity, quality or conditions of said materials once the contractor has taken the delivery thereof. For all owner supplied material, the contractor shall submit reconciliation statement along monthly R.A. bill beginning from the second R.A. bill.

32.03 All materials supplied to the Contractor shall remain the absolute property of Employer and shall, on no account, be removed from the site of work, and shall at all time, be open to inspection by Employer and the Engineer. All scrap and wastage shall be Employer's property and shall be returned by the Contractor at regular intervals. Empty cement bags shall be Employer's property and at least 80% of the empty bags shall be returned in good conditions failing to comply which Rs. 2 per each bag shall be deducted from the Contractor's bill.

32.04 Issue of Cement and steel measurements and recovery shall be as follows:

- (a) Cement shall be supplied in jute/HDPE bags as received from manufacturer/supplier and shall deem to contain 50 kgs. Of cement.
- (b) Contractor shall use the cement strictly as per the specifications and should keep account of day-to-day consumption and issue of the cement bags.
- (c) All Reinforcement/Structural steel shall be issued to the contractor by Employer on weigh basis.
- (d) Measurement of Reinforcement/Structural steel for payment shall be on the basis of actual lengths of section/bars used or erected and standard weights as per IS Codes.
- (e) Accountable wastage of only 3% (0.5% invisible + 2.5% visible) of the actual usage shall be allowed in case of consumption of reinforcement/structural steel. This includes scarp left after the completion of the work. Scrap reinforcement (bars of less than one meter length) and structural steel sections shall be returned to Employer by weight at the contractor's expense at Employer's yard or any such storage area as directed.

(f) Rolling Margin

Generally there is variation between weight of steel member as supplied and standard weight as per IS specifications. Rolling margin shall be determined for each lot of structural steel and reinforcement bars supplied by Employer or directly purchased by the Contractor on behalf of Employer by actual weighment of samples as directed by the Engineer. Joint record shall be maintained for each lot of steel supplied. Weighted average rolling margin shall be calculated based on above joint record and shall be allowed in final certification. The contractor shall be, however, paid on the basis of standard weights in the running bills. For the final bill, reconciliation account will be made considering actual steel supplied and weighted average rolling margin based on joint record and wastage as mentioned.

(g) The Contractor shall reconcile the quantity of cement issued to him after virtual completion of the works as per cement consumption data given in Table –I for scrutiny and approval of the Engineer.

- (h) The penal rates for Client supplied items shall be in general 1.5 times the basic rates of material including all costs of loading, unloading, transportation, etc. for delivery at the work site

**SECTION - G: APPENDIX TO GENERAL CONDITIONS OF CONTRACT**

SR NO	ARTICLE	SUBJECT	PERIOD / AMOUNT
1.	B6	Earnest Money Deposit in favour of the Owner	Rs. 3,50,000 in form of DD or Bank Guarantee valid for sixty (60) days and payable at Gujarat. A Tender processing fee (Non-refundable) of Rs 10,000 to be submitted at time of submission of tender in cash or DD.
2.	B14, D17	Performance Bank Guarantee	To be provided by the Contractor within Three (3) weeks of the receipt by the Contractor of the letter of acceptance of the Tender Five (5) percent of the Contract Sum.
3.	D38 (1)	Date of Commencement/Effective Date	Within fifteen (15) days of the receipt by the Contractor of the letter of acceptance of the Tender, and as further stated by the Contractor in writing to the Owner in this regard.
4.	D38 (1)	Time of Completion	As per the Milestones mentioned in Annexure V from the Date of Commencement.
5.	D41	Liquidated and Ascertained damages	Liquidated damages shall be applicable on Milestones mentioned in Annexure V
6.	D42(2)	Defects Liability Period (Period of Maintenance)	Twelve (12) months from the date of virtual completion.
7.	D31(1)	Value of work for submission of Interim RA Bill (Claim)	Minimum ten (10) percent of the Contract Sum or one month –whichever is earlier
8.		Adhoc Payment	Maximum 50% of the interim bill amount shall be paid upon the request at client's discretion.
9.	D31(1)	Period of Bill Verification to be within	Fourteen (14) days of receipt of the Contractor's Bill (Claim)
10.	D31(1)	Payment of RA Bill to be within	Ten (10) days of date of verification
11.	D31(3)	Retention Percentage	Five (5) percent of the value of certified bill
12.	D31(3)	Limit of Retention Fund	Five (5) percent of the value of the Contract Sum or total value of work done whichever is greater. Out of that 2.5 percent will be released after one (1) month from virtual completion of the work and balance after Twelve (12) months from virtual completion or shall be released against submission of Performance Bank guarantee (PBG).
13.		Rate of Interest for Delayed Payment	NIL
14.	D31 (5)	Period of final measurement	Two (2) months after completion.
15.	D66	Advance payment to the Contractor	Maximum of 25% Advance against ABG from Nationalized bank up on the actual site mobilization
16.	D66	Advance repayment by the Contractor	On pro-rata basis from every bill.

SR NO	ARTICLE	SUBJECT	PERIOD / AMOUNT
17.	B4.02	Contractor's Address for Service of Notice	As per Annexure VI
18.	B11	Owner's Address for Service of Notice.	FANIDHAR MEGA FOOD PARK PVT. LTD. 10/11, SECOND FLOOR, ORCHID THE SHOPPING MALL, OPP. THALTEJ LAKE, THALTEJ, AHMEDABAD GUJARAT-380059
19.	D30	Extra Items	Actual material cost + Labour cost + other taxes + 15% Overhead & Profit
20.		Reconciliation of Material as applicable	The Contractor shall maintain at all times proper records of material received, consumed and stock of all materials for use in the construction of Cold Storage works at the site.  The Contractor shall also provide a proper reconciliation of the material consumed, duly verified by the Consultants / Employer, and along with the RA bills submitted from time to time and also Final reconciliation Statement with final Bill.
21.		Penalty	Rs. 1,000/- per incident of unsafe act / noncompliance of Legal / Statutory requirements as may be pointed out by the Consultants / Employer. Such fault shall also include acts that are specifically prohibited under various provisions / clauses provided as part of this tender document.
22.		Undertaking for Safety	The Contractor is required to give an undertaking that all safety Rules & Regulations will be followed by him as per Tender.
23		Discharge Certificate	Upon submission of the final bill, the contractor shall give the employer a written discharge statement stating that the total of the final bill represents the full and final settlement of all money due to the contractor arising out of or in respect of the work order, provided that such discharge shall become effective only after payment due, under the final bill has been made.

## **SECTION - H: SCOPE OF WORK**

### **1.00 General**

The Scope of Works includes Civil, Structural & Infrastructure, works for Pack house and Potato flakes unit at Mudarda Village, Mehsana, Gujarat, for the Owner at the Site, involving works such as site leveling, grading, site preparation and other ancillary works for the project.

### **2.00 Project Sites**

Proposed work Site is situated at Mudarda Village, Mehsana, Gujarat.

### **3.00 Mobilization and Demobilization**

- (a) Site Clearance and levelling
- (b) Housing for Contractor's staff and Labourers – NOT ALLOWED within the premises of client.
- (c) Temporary stores, sheds and other buildings or structures required for the proper and timely execution of the works at designated place of client's premises.
- (d) All necessary plants, equipments and machinery required for the proper and timely execution of the works.
- (f) Arrangement of Water supply for construction, labour and staff, and Site office at his own cost. Owner will not provide water as Mentioned in Article 3.0 of **section-F**.
- (g) Power required for construction, erection and lighting for Site area. Owner will provide power at one point as Mentioned in **Article 3.0 of section –F**.
- (h) Sanitary facilities for Site Office.
- (i) Surface drainage of Site during construction.
- (j) Final cleaning of Site and removal of all temporary works including Site office, plant, equipments etc. on completion of the work.

It is assumed that the cost of Mobilization and Demobilization is included in item rates. No separate price is payable for temporary works.

### **4.00 Permanent works**

#### **Civil Works**

Sub base civil works like Excavation, Foundation, Plinth beam etc.

Super Structure work like Brickwork plaster paint, sanitary fixtures & Fittings, windows doors etc.



## SECTION - I: FORM OF AGREEMENT

THIS AGREEMENT made on ..... of the year Two Thousand Seventeen BETWEEN Fanidhar Mega Food Park Pvt. Ltd., having its registered office at having its registered office at 10/11, Second Floor, Orchid The Shopping Mall, Opp. Thaltej Lake, Thaltej, Ahmedabad, Gujarat-380059 India (hereinafter referred to as "**the Owner**" which expression shall unless repugnant to the context or meaning thereof mean and include its successors, executors, administrators and assigns) of the One Part and \_\_\_\_\_ having its registered office at \_\_\_\_\_ hereinafter referred to as "**the Contractor**" which expression shall unless repugnant to the context or meaning thereof mean and include its successors, executors, administrators and assigns) of the Other Part.

WHEREAS the Owner desires to have the Civil, Structural & Infrastructure, works for Pack house and Potato flakes unit of the Owner at Mudarda Village, Mehsana, Ahmedabad, Gujarat (hereinafter referred to as "the Works") and has prepared General and Special Conditions of Contract, Specifications, Scope of Work, Drawings, Day Work Schedule, Schedule of Basic Price and Bills of Quantities showing and describing the work to be done by or under the direction of **M/S. VMS Engineering & Design Services Pvt. Ltd.**, having its office at ground floor, Chitrakoot Flats, Ashram Road, Ahmedabad 380 009, (hereafter referred to as "**The Engineer**" which expression shall unless repugnant to the context or meaning thereof mean and include its successors, executors, administrators and assigns).

AND WHEREAS the Contractor by his Tender based upon the Contract Documents mentioned in this Agreement has offered to construct, complete and maintain such works upon the terms, within the period and in the manner mentioned therein.

AND WHEREAS the Contractor has, as he hereby admits, acquainted himself with all matters and things which might affect him in carrying out the Contract and obtained his own information on all matters affecting the execution of the Works and has fully satisfied himself thereon.

AND WHEREAS it has been agreed between the said parties that these presents shall be entered into by way of Contract and that on or before the date hereof the Contractor has secured for the due performance of the Contract a Performance Bank Guarantee of for the sum of Rs. Rs. \_\_\_\_\_ (Rupees \_\_\_\_\_ only) representing 5% of the contract sum which Performance Bank Guarantee has been handed over by the Contractor to the Owner.

AND WHEREAS the Owner has accepted the Tender of the Contractor for the construction, completion and maintenance of the said Works for the Contract Sum of Rs. \_\_\_\_\_ (Rupees \_\_\_\_\_ only).

NOW THIS DEED WITNESSETH and it is hereby agreed and declared as follows:

- .01 In this Agreement, words and expressions shall have the same meaning as are respectively assigned to them in the General and Special Conditions of Contract hereinbefore referred.
- .02 That in consideration of the payment to be made the Contractor hereby covenants with the Owner that the Contractor shall and will duly construct, complete and maintain the said Works and shall do and perform all other acts and things mentioned or described in the Contract or which are to be implied there from or may be reasonably necessary for the completion of the said Works within and at the time and in the manner and subject to the terms, conditions and stipulations mentioned in the Contract.

- .03 And in consideration of the due construction and completion of the Works and the maintenance thereof as aforesaid the Owner does hereby covenant with the Contractor that he, the Owner, will pay to the Contractor the Contract Sum or such other sum as may become payable to the Contractor under the provisions of the Contract, such payments to be made at such time and in such manner as is provided by the Contract.
  
- .04 This Agreement along with the General Conditions of Contract, Special Conditions of Contract, Specifications, Scope of Work, Bills of Quantities, Drawings, day work schedule, schedule of basic price and Performance Bank Guarantee form the entire agreement between the parties and the General Conditions of Contract and Special Conditions of Contract, Scope of Work, Bills of Quantities, Drawings, day work schedule, schedule of basic price and Performance Bank Guarantee will be deemed to be a part of this Agreement. It is the complete and exclusive expression of the parties' agreement on the matters contained herein. All prior and contemporaneous negotiations and agreements between the parties on the matters contained in this Agreement are expressly merged into and superseded by this Agreement. In the event of any inconsistencies in the documents, the provisions of the General Conditions of Contract and Special Conditions of Contract will supersede. In entering into this Agreement, neither party has relied on any statement, representation, warranty or agreement of the other party except for those expressly set forth in this Agreement. For avoidance of doubt, any dispute arising between the parties under the Agreement will be resolved by arbitration in accordance with Article 56 of the General Conditions of Contract and the said Article 56 shall be deemed to have been incorporated herein by reference.

IN WITNESS whereof the parties hereto have hereunto set their respective hands and seals the day and year first above written.

SIGNED, SEALED AND DELIVERED  
FOR THE OWNER BY

.....  
in his capacity as

.....

in the presence of

.....

SIGNED, SEALED AND DELIVERED  
FOR THE CONTRACTOR BY

.....  
in his capacity as

.....

in the presence of

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