

**DEDICATED FREIGHT CORRIDOR CORPORATION OF INDIA
LTD.**

Section VI

GENERAL CONDITIONS OF CONTRACT (GCC)

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**GENERAL CONDITIONS OF CONTRACT
FOR
BUILD ONLY AND PART DESIGN AND BUILD CONTRACTS**

1. GENERAL PROVISIONS

1.1 Definitions

In the contract (defined below) the following works and expressions shall have the meanings assigned to them, except where the context requires otherwise. Works indicating persons or parties include corporations and other legal entities except where the context requires otherwise.

- a. **“Employer”** means **Dedicated Freight Corridor Corporation of India Ltd. (DFCC), its legal successors and assignees.**
- b. **“Engineer”** means any person nominated or appointed from time to time by the Employer to act as the Engineer for the purpose of the Contract and notified to the Contractor by the Employer.
- c. **“Engineer’s Representative”** means any assistant of the Engineer, appointed from time to time by the Engineer.
- d.
 - i). **“Contractor” or “Successful Tenderer”** means the person whose tender has been accepted by the Employer and the legal successors in title to such person. In this condition the two words are used interchangeably.
 - ii). **“Contractor’s Representative”** shall mean a person named by the Contractor or appointed from time to time by the Contractor to act on behalf of Contractor.
- e. **“Sub Contractor”** means any person named in the contract as a sub contractor or any person appointed *by the contractor* with the approval of employer as a sub contractor for a part of the work and the legal successors in title to each of these persons.
- f. **“Other Contractor”** means a person employed by or having a Contract directly or indirectly with the employer otherwise than through the Contractor.
- g. **“Tenderer or Bidder”** means the person submitting a bid/Tender.
- h. **“Scheduled bank”** means a bank included in the second schedule to the Reserve Bank of India Act, 1934, or modifications thereto.
- i. **“Contract”** means the Contract agreement, the Letter of Acceptance, the Letter of Tender, these conditions, the specifications, the drawings, the schedules and the further documents (if any) which are listed in the Contract agreement or in the Letter of Acceptance..
- j. **“Tender or Bid”** means the offer made by the Tenderer to the Employer for the execution of the Works.
- k. **“Specification”** means the specification referred to in the Contract and any modification thereof or addition thereto, as may from time to time be furnished or approved in writing by the Engineer.
- l. **“Drawings”** means the Drawings of the works, as included in the contract and any additional/modified Drawings approved by the Engineer from time to time.

- m. **“Bill of Quantities”** means the priced and completed bill of quantities forming part of the tender.
- n. **“Contract Price”** or **“Contract Value”** means the sum stated in the letter of Acceptance, subject to such additions thereto or deductions there from as may be made under the provisions of the Contract.
- o.
 - i. **“Works”** means the Permanent Works or Temporary works, or either of them as appropriate.
 - ii. **“Permanent Works”** means the permanent works to be executed, completed and maintained in accordance with the Contract.
 - iii. **“Temporary Works”** means all temporary and enabling works of every kind required for the execution and completion of the works and the remedying of any defects therein.
- p. **“Contractor’s Documents”** means the calculations, computer programs and other softwares, drawings, manuals, models and other documents of a technical nature (if any) supplied by the Contractor under the Contract.
- q. **“Constructional Plant”** means all machinery, appliances or things of whatsoever nature, required for the execution, completion or maintenance of the works, but does not include material or other things, intended to form a forming part of the Permanent Works.
- r. **“Site”** means the places provided by the employer where the works are to be executed and to which plant, and materials are to be delivered, and any other places as designated in the Contract as forming part of the site.
- s. **“Materials”** means things of all kinds (other than Plant) to be provided and incorporated in the permanent Works by the Contractor, including the supply only items (if any) as specified in the contract.
- t. **“Test”** means such tests as are prescribed in the Specifications or by the Engineer or Engineer’s Representative, whether performed by the Contractor or by the Engineer or his Representative or any agency under the direction of the Engineer.
- u. **“Approval or Approved”** means Approval in writing including subsequent written confirmation of previous verbal approval.
- v. **“Defects Liability Period”** means the period for remedy of defects (if any) specified in the contract commencing from the date of completion of the work as certified by the Engineer.
- w. **“Letter of Acceptance”** means the formal acceptance letter from the Employer of the Tender.
- x.
 - i. **“Day”** means a calendar day.
 - ii. **“Month”** means a calendar month”
 - iii. **“Year”** means 365 days.
- y. **“Terms and expressions not herein defined”** shall have the meanings assigned to them in the “Indian General Clauses Act, 1897” or the Indian Contract Act or the Indian Sale of Goods Act or any other applicable Indian law, as the case may be.

1.2 Interpretation

In the Contract except where the context requires otherwise:

- a. words indicating one gender include all genders:
- b. words indicating the singular also include the plural and words indicating the plural also include the singular and
- c. "written" or "in writing" means hand-written, type written, printed or electronically made and resulting in a permanent record.

The marginal words and other headings shall not be taken into consideration in the interpretation of these conditions.

1.3 Communications and Language of Contract

1.3.1 Communications to be in writing

Communications between parties will be effective only when in writing. Verbal communication if any must be confirmed in writing later on. A notice will be effective only when delivered/*dispatched*.

1.3.2 Language of Contract

The contract document shall be in English.

1.4 Governing Law and Priority of Documents

1.4.1 Governing Law

The Contract shall be governed by the Acts and Laws of India, the rules, regulations and bye-laws of the concerned public bodies and authorities.

1.4.2 Jurisdiction of Courts

This is a condition of contract that the courts at Delhi/New Delhi shall have the exclusive jurisdiction to try all disputes between the parties arising out of the agreement.

1.4.3 Priorities of documents

The several documents forming the contract are to be taken as mutually explanatory of one another. If any inconsistency or discrepancy is found in the documents, the Engineer shall issue any necessary clarification or instruction. For the purpose of interpretation, the priority of documents shall be in accordance with the following sequence:

- a) The letter of Acceptance.
- b) the Contract Agreement (if completed).
- c) The notice inviting Tender/Instructions to Tenderers.
- d) Special conditions of Contract.
- e) General conditions of Contract.
- f) Bill of Quantities

- g) Drawings.
- h) The specifications
- i) The schedules and any other document forming part of Contract.

1.5. Joint and Several Liability

If the contractor is (under applicable Laws) a joint venture, consortium, or other incorporated grouping of two or more persons:

- a. these Persons shall be deemed to be jointly and severally liable to the Employer for the performance of the Contract.
- b. these Persons shall notify the Employer of their leader who shall have authority to bind the Contractor and each of these persons: and
- c. The Contractor shall not alter its composition or legal status without the prior consent of the Employer.

2. EMPLOYER

2.1 General Obligations

The Employer shall provide the site and pay the Contractor in accordance with the Contract.

The Employer shall give the Contractor right of access to and possession of the Site progressively to enable the Contractor to complete the Works as per schedule. The right and possession may not be exclusive to the Contractor.

2.2. Permits, License or approvals

It shall be contractor's responsibility to get approvals, permits or license required for the contract. However, the Employer shall (where he is in position to do so) provide reasonable assistance to Contractor at the request and cost of the Contractor in getting Permits, License or Approvals required during the Contract.

2.3 Assignment by the Employer

The Employer shall be entitled without the consent of the Contractor to fully assign the benefit of the Contract or any part thereof and interest therein or there under to any third party.

3. ENGINEER AND ENGINEER'S REPRESENTATIVE

3.1 Duties and Authority of Engineer

The Engineer shall carry out the duties specified or implied in the Contract. If the Engineer is required to obtain the Approval of the Employer before exercising a specified authority, as per the requirement in accordance with the contract. Any requisite approval shall be deemed to have been given by the Employer for any such authority exercised by the Engineer. The Engineer shall have no authority to amend the Contract nor to relieve the Contractor of any of its obligations of the Contract.

3.2 Delegation by the Engineer

- i. The Engineer may from time to time assign duties and delegate authority to Engineers Representative/assistants and may also revoke such assignments or delegations. The delegation or revocation shall be in writing.
- ii. Each Assistant to whom duties have been assigned or authority has been delegated shall be authorized to issue instructions to the Contractor to the extent defined by the delegation. Any approval, check, certificate, consent, examination, inspection, instruction, notice, proposal, request, Test or similar act by assistance shall have the same effect as though the act had been act of the Engineer. However,
 - a. Any failure to disapprove any work, plant or Materials shall not constitute Approval, and shall not therefore prejudice the right of the Engineer to reject the work, plant and materials.
 - b. If the Contractor questions any determination or instruction of an assistant, the contractor may refer the matter to the Engineer who shall promptly confirm, reverse or vary the determination or instruction.

3.3 Assistants to Engineer and Engineer's Representative

The Engineer or the Engineer's representative may appoint any number of assistants to assist them after duly notifying their names, duties and scope of authority to the contractor.

3.4 Instructions of the Engineer

The Contractor shall comply with the instructions given by the Engineer, Engineer's Representative or the delegated assistant, on any matter related to the Contract. Wherever practicable, their instructions shall be given in writing. If the Engineer or a delegated assistant:

- a. Gives an oral instruction
- b. Receives a written communication of the instruction, from (or on behalf of) the Contractor, within two working days after giving the instruction, and
- c. Does not reply by issuing a written rejection and/or instruction within two working days after receiving the confirmation,

then the confirmation shall constitute the written instruction of the Engineer or delegated assistant (as the case may be).

4. CONTRACTOR

4.1 Contractor's General Obligations

The Contractor shall design (to the extent specified in the Contract), execute and complete the Works in accordance with the Contract and with the Engineer's

instructions, and shall remedy any defects in the Works, as directed by the Engineer.

The contractor shall provide the Plant and Contractor's documents specified in the Contract, and all Contractor's Personnel, Goods, consumables and other things and services, whether or a temporary or permanent nature, required in and for this design, execution, completion and remedying of defects.

The Contractor shall be responsible for the adequacy, stability and safety of all such operations and of all methods of construction. The Contractor shall, whenever required by the Engineer, submit details of the arrangement and methods which the contractor proposes to adopt for the execution of the works. No significant alteration to these arrangements and methods shall be made without this having previously been notified to the Engineer.

If the Contract specifies that the Contractor shall design any part of the Permanent Works, then unless stated in Special Conditions of contract:

- a. the Contractor shall submit to the Engineer the Contractor's document for the part in accordance with the procedures specified in the Contract;
- b. these Contractor's Documents shall be in accordance with the specifications and Drawings, shall be written in the language for communications defined in and shall include additional information required by the Engineer to add to the Drawings for co-ordination of each party's designs;
- c. the Contractor shall be responsible for this part and it shall, when the Works are completed, be fit for such purposes for which the part is intended as are specified in the Contract; and
- d. prior to the commencement of the Tests on completion, the Contractor shall submit to the Engineer the "as-built" documents and operation and maintenance manuals without any extra cost in accordance with the Specifications and in sufficient detail for the Employer to operate, maintain, dismantle, reassemble, adjust and repair this part of the Works, Such part shall not be considered to be completed for the purposes of issue of Completion Certificate until these documents and manuals have been submitted to the Engineer.

4.2 Contractor's Warranty of Design

If it is specified in the Contract that the Contractor shall be responsible for design;

- a. The Contractor warrants that the Contractor's part of the design (in accordance with **Sub-Cause 4.1**) meets the specifications provided by the Employer and is fit for the purpose thereof. Where there is any inadequacy, insufficiency, impracticality or unsuitability in or of the specification or any part thereof, the Contractor's part of the design shall take into account, address or rectify such inadequacy, insufficiency, impracticality or unsuitability at Contractor's own cost.

- b. The Contractor shall indemnify the Employer against any damage, expense, liability, loss or claim, which the employer might incur, sustain or be subject to arising from any breach of the contractor's design responsibility and/or warranty set out in this clause.
- c. The contractor further specifies and is deemed to have checked and accepted full responsibility for the Contractor's part of the design (in accordance with **Sub Clause 4.1**).
 - i. Notwithstanding that such design may be or have been prepared, developed or issued by the Employer, any of Contractor's consultants, his sub contractor's and/or his qualified personnel/persons or cause to be prepared, developed or issued by others.
 - ii. Notwithstanding any warranties, guaranties and/or indemnities that may be or may have been submitted by any other person.
 - iii. Notwithstanding that the same have been accepted by the Engineer.

4.3 Compliance with Regulations and Bylaws

The Contractor shall confirm in all respects with:

- a. The Contractor shall conform to the provision of any statute relating to the works and regulation and bye-laws of any local authority and of any water and lighting companies or undertakings, with whose system the work is proposed to be connected and shall before making any variation from the drawings or the specifications that may be necessitated by so confirming give to the Engineer notice specifying the variation proposed to be made and the reason for making the variation and shall not carry out such variation until he has received instructions from the Engineer in respect thereof. The Contractor shall be bound to give all notices required by statute, regulations or bye-laws as aforesaid and to pay all fees and taxes payable to any authority in respect thereof which will be reimbursed on production of proper record.

The provision of all laws of land in force and enacted from time to time will be complied by the Contractor.

- b. the regulations or bye-laws of any local body and utilities.
- c. the contractor shall be bound to give all notices required by statute, regulations or bye-laws, aforesaid and to pay all fees and bills payable in respect thereof. The contractor will arrange necessary clearances and approvals before the work is taken up. Nothing will be paid by employer on this account.

Ignorance of rules, regulations and bylaws shall not constitute a basis for any claim at any stage of work.

4.4 Representation of Works

The Contractor shall, when he is not personally present on the site of the works place and keep a responsible agent at the works during working hours who shall on receiving

reasonable notice, present himself to the Engineer and orders given by the Engineer or the Engineer's Representative to the agent shall be deemed to have the same force as if they had been given to the Contractor. Before absenting himself, the Contractor shall furnish the name and address of his agent for the purpose of this clause and failure on the part of the Contractor to comply with this provision at any time will entitle the DFCC to rescind the contract under Clause 11 of these conditions.

4.5 Provision of Efficient and Competent Staff

The Contractor shall employ and keep on the works at all times efficient and competent staff to give necessary directives to his workers for execution of works in a safe and proper manner. If the Engineer asks the Contractor to remove a person of his work force stating the reasons, the contractor shall ensure that the person leaves the site within seven days and has no further connection with the work in the Contract.

4.6.1 Securities.

4.6.2 Tender Security (EMD)

Tender shall be accompanied with tender security at 1% of estimated cost of tender in shape of FDR (Fixed deposit receipt) upto Rs 1 crore & balance if any in shape of BG (on prescribed proforma Annexue - A of these conditions) if tenderer so desires from a scheduled bank. The tender security of the successful tender shall be kept as security deposit for fulfillment of contractual obligations. Tenders without the requisite security shall be summarily rejected. The tender Security of unsuccessful tenderer/s shall be returned on award of contract.

4.6.3 Performance Security

4.6.2.1 Amount of performance Security

- i. Within 15 days of receipt of the Letter of Acceptance, the successful Tenderer shall furnish Performance Security for an amount of 5(Five)% of contract value in the form of a bank guarantee from a Scheduled Commercial bank in India. The prescribed form annexed as Annexure B of these conditions provided in the "Instructions to Tenderers" documents shall be used for Bank Guarantee. The bank Guarantee shall be valid upto 6 months beyond the "Defects Liability Period".
- ii. Failure of the successful Tenderer to furnish the required Performance Security shall be a ground for the annulment of the award of Contract and forfeiture of the Tender security.

4.6.2.2 Security Deposit.

The tender security deposited by the contractor with a tender will be retained by employer as part of security of the due and faithful fulfillment of the contract by the contractor and in addition, 10% will be deducted from on-account bills progressively so that overall retained security is 5 % of contract value, including tender security.

4.6.2.3 Release of Performance Security & Security Deposit.

- i. On completion of the entire work, Security Deposit shall be refunded to the Contractor. This shall not relieve the Contractor from his obligations and liabilities, to make good that may be detected during the Defects Liability Period and on issue of maintenance certificate by the Engineer.
- ii. The balance amount of performance security be paid to the Contractor, after the expiry of the Defects Liability Period & issue of maintenance certificate by the Engineer.

4.7 Assignment of Contract

The Contractor shall not assign a right or benefit under the Contract without first obtaining Employer's prior written consent, otherwise than by:

- a charge in favour of the Contractor's bankers of any money due or to become due under the contract, or
- b assignment to the Contractor's insurers (in cases where the insurers have discharged the Contractor's loss or liability) of the Contractor's right to obtain relief against any other party liable.

4.8 Subcontracting

- i. The contractor shall not subcontract the whole of the Works.
- ii. The Contractor can Subcontract part of the work upto 5% of contract value. Subcontracting by more than 5% shall require prior written consent of the employer.
- iii. Subcontracting does not alter the Contractor's obligations in any manner and the Contractor shall ensure sufficient superintendence as well as impose such terms and conditions on the subcontractor as are appropriate to the parts of the works Sub-Contractor, to enable the Contractor comply with his obligations under the Contract.
- iv. The contractor shall not be required to obtain such consent for provision of labour and material and for petty contractors/piece works under direct supervision of Contractor's Representatives.

4.9 Assignment of Subcontractor's Obligations

If a Subcontractor's obligations extend beyond the expiry date of Defects Liability Period then the contractor shall assign the benefits of such obligations to the Employer.

4.10 Compensation for Breach

Any breach of **sub clauses 4.7 to 4.9** shall entitle the Employer to terminate the Contract under **Clause 11.4** of these conditions and also render the contractor liable for loss or damage arising due to such termination.

4.11 Specifications and Drawings

4.11.1 Ownership

The contractor shall keep at site in good order, one copy of latest approved Specifications, drawings and other documents. All specifications and drawings shall remain the property of the Employer and shall be returned to the Employer on completion or on termination of the contract.

4.11.2 Adherence to specifications and Drawings

- i. The works shall be executed in conformity with the Specifications and drawings of the Contract issued to the Contractor by the Engineer from time to time. If the contractor does any work or part in a manner contrary to the specifications or drawings, he shall bear all the costs arising therefrom including dismantling and reconstruction strictly in accordance with the specifications and drawings and shall be responsible for all loss to the Employer.
- ii. If any ambiguity arises as to the meaning and intent of any portion of the Specifications and drawings or as to execution or quality of any work or material or as to the measurement of the works, the decision of the Engineer thereon shall be final and binding.
- iii. The term “drawings” in this sub clause includes also the drawings prepared by the Contractor and approved by the Engineer, as specified in the special Conditions of Contract.

4.11.3 Compliance with Contractor’s Request for Details

i. The contractor shall give written notice to the Engineer whenever progress of the works is likely to be delayed or disrupted unless any further drawing, where the special conditions of Contract provide for such drawings to be prepared by the Engineer, or order, including a direction, instruction or approval is issued by the Engineer within a reasonable time. The notice shall include details of the Drawing or order required and of why and by when it is required and of any delay or disruption likely to be suffered if this issue is delayed.

ii. The Engineer shall furnish with reasonable promptness, on receipt of request from the Contractor, additional instructions by means of drawings or otherwise necessary for the proper execution of the works or any part thereof. All such Drawings and instructions shall be consistent with the Contract documents and reasonable inferable

therefrom. The Engineer may ask the Contractor for alternative proposals or clarifications or additional data or any other detail in respect Contractors request, if any.

If, due to any failure or inability of the Engineer to issue within a reasonable time any drawing or order requested by the Contractor as stated above, the contractor suffers delay and/or incurs additional costs, the Engineer shall take such delay into account while determining any extension of time to which the Contractor would be entitled and no claim whatsoever shall be entertained on this account.

4.12 Deleted.

4.13 Deleted.

4.14 Temporary Works

All temporary works necessary for the proper execution of the works shall be provided and maintained by the Contractor at his cost and subject to the consent of the Engineer shall be removed by Contractor at his own expense when they are no longer required and in such manner as the Engineer shall direct. In case the Contractor fails to get the same removed, than the same will be removed by the Engineer/Employer and cost thereof shall be recovered from the Contractor.

4.15 Bore holes and Exploratory Excavation

The contractor shall be guided by the Site investigation details furnished in the Tender Documents. In such cases, if the Engineer shall require the Contractor to make bore holes or to carry out explanatory excavation, the same shall be paid extra to the contractor as determined by the Engineer.

4.16 Setting Out

4.16.1 Accurate setting Out

The Contractor shall be responsible

- a. the accurate setting out of the works in relation to the original points, lines and levels of reference given by the Engineer in writing.
- b. The correctness of position, levels, dimensions and alignments of all parts of the works.
- c. The provisions of all necessary instruments, equipment, apparatus and labour in connection with the foregoing responsibilities.
- d. Carefully protecting and preserving all bench marks, sight rails, pegs and other things used in setting out the works.

4.16.2 Errors in Setting Out

If at any time during the execution of the work, an error appears in the positions, levels, dimensions or alignment of any part of the works, the contractor on being required to do so by the Engineer shall, at his cost, rectify such error to the satisfaction of the Engineer **with no extra cost**.

4.17 Safety of Works

The contractor shall be responsible for safety of works at site. In this connection, Contractor is required to take note of all necessary provisions in Employer's Safety, health and Environment Manual (SHE Manual), which shall be inclusive of all necessary costs to meet the prescribed safety standards. In the case, the contractor fails in the above, the Employer may provide the necessary arrangements and recover the costs from the Contractor.

4.18 Security of site and works

Unless otherwise stated in special Conditions of Contract

- a. the contractor shall be responsible for keeping unauthorized persons off the site.
- b. Authorized persons shall be limited to the Employees of the Contractor, subcontractor or persons authorized by the Engineer.

4.19 Site Data and Inspection of site

- i. The employer shall have made available to the Contractor with the tender documents such relevant data in Employer's possession on hydrological and sub surface conditions. The contractor shall be responsible for interpreting all such data.
- ii. The contractor shall be deemed to have obtained all necessary information as to risks, contingencies and other circumstances which may influence or affect the Tender or Works.
- iii. The contractor shall also be deemed to have inspected and examined the site, its surroundings, the above data and other available information and to have been satisfied before submitting the tender as to all the relevant matters, including without limitation:
 - a. the form and nature of the site, including the subsurface condition
 - b. the hydrological and climatic conditions
 - c. the extent and nature of work and goods necessary for the execution and completion of the work and the remedying of any defects.
 - d. The applicable laws, procedures and labour practices

- e. The contractor's requirement for access, accommodation, facilities, personnel, power, transport, water and other services.

4.20 Sufficiency of accepted Contract amount

The contractor shall be deemed to have satisfied himself, before Tendering, as to the correctness and sufficiency of his tender for the works and of the rates and prices stated in the priced Bill of quantities and the schedule of rates and Prices, if any, all of which shall, except in so far as it is otherwise provided in the contract, cover all his obligations under the contract and all matters and things necessary for the proper execution and maintenance of the works. The tenders containing any deviation from the Contractual Terms and conditions, specifications and other requirements save as provided in this General Conditions of Contract or Special Conditions of Contract shall be rejected as non responsive.

4.21 Unforeseeable Physical conditions

In this clause "physical conditions" means natural physical conditions, which the Contractor encounters at Site while executing the Works excluding climatic conditions.

If during the execution of the works, the Contractor shall encounter physical conditions, which, in his opinion, could not have been reasonably foreseen by an experienced Contractor, the Contractor shall forthwith give written notice thereof to the Engineer and if, in the opinion of the Engineer, such conditions could not have been reasonably foreseen by an experienced Contractor, then the Engineer shall certify and the Employer shall pay reasonable additional cost to which the Contractor shall have been put by reason of such conditions in the following cases:

- a. for complying with any instruction which the Engineer may issue to the Contractor in connection therewith, and
- b. for any proper and reasonable measures approved by the Engineer which the Contractor may take in the absence of specific instructions from the Engineer, as a result of such conditions or obstructions being encountered.

When the Engineer is required to determine value, cost or extension of time, he shall consult with the Contractor and the Employer in an endeavour to reach agreement. If agreement is not achieved, the Engineer shall determine the matter fairly, reasonably and in accordance with the Contract, with the approval of Employer.

4.22 Right of Way and Facilities

The Employer will acquire and provide land for Permanent Works and right of way (within DFCC's land). The contractor shall bear all cost and charges for special or temporary rights of way which he may require including those of access to the site. The contractor shall also obtain, at his risk and cost, any additional facility outside the site which he may require for the purpose of the Works the Employer/Engineer reserves the right to make use

of these service roads/rights of way for itself or for other Contractors working in the area, as and when necessary without any payment to the Contractor.

4.22.1 Avoidance of Interference And Safety of Public

- i. The contractor shall not interfere unnecessarily or improperly with:
 - (a) the convenience of the public, or
 - (b) the access to and use of all roads, footpaths, waterways without the prior permission of the Engineer.

The contractor shall indemnify and hold the Employer harmless against and from all damages, losses and expenses (including legal fees and expenses) resulting from any such unnecessary or improper interference.

- ii During progress of work in any street or thoroughfare, the Contractor shall make adequate provision for the passage of traffic, for securing safe access to all premises approached from such street or thoroughfare and for any drainage, water supply or means of lighting which may be interrupted by reason of execution of Works and shall erect and maintain at his own cost save as provided in the Contract barriers, lights and other safeguards as prescribed by the Engineer for the regulation of traffic, and provide watchman necessary to prevent accidents. The Works shall in such cases be executed day and night if the Engineer so decides and so that the traffic is impeded for as short a time as possible.
- iii Existing road or watercourses shall not be blocked, cut through, altered, diverted or obstructed in anyway by the contractor, except with the permission of the Engineer. All compensation claimed for any unauthorized closure, cutting through, alteration, diversion or obstruction to such roads or water courses by the Contractor or his staff or Sub Contractors shall be recoverable from the Contractor by deduction from any sums which may become payable to him in terms of the Contract or any other amount due to him in any other Contract.
- iv. The contractor shall be responsible for taking all precautions to ensure safety of the public, whether on public or Employer's property and shall post such look-out men as may, in the opinion of the Engineer, be necessary to comply with the regulations appertaining to the work and to ensure safety.

4.23 Electricity, Water and Gas

The contractor shall be responsible for making his own arrangements at his own cost to obtain supply of water, electricity or gas for the works. The Employer where feasible may at his discretion assist the contractor in this respect.

The Employer may provide water, electricity or gas if available at the rates fixed by the Engineer but employer will not be responsible for any disruption of supply of these items and in that case, contractor will make his own arrangement to avoid suffering of progress of work.

4.24 Contractor's Equipment

- 4.24.1 All constructional plant and materials provided by the Contractor once bought by the contractor to site shall be deemed to be extensively intended for the execution of the works and Contractor shall not remove them without the consent in writing of the Engineer.
- 4.24.2 Deleted.
- 4.24.3 The employer shall not at any time be liable for the loss or damage to any of the Constructional Plant, Temporary works or Materials save as mentioned in **Clauses 18.5 and 18.1**.
- 4.24.4 In respect of any Constructional Plant which the Contractor shall have imported for the purpose of the works, the employer will assist the Contractor, where required, in procuring any necessary Government consent for re-export of the same after completion of the works.
- 4.24.5 The Employer may assist (but is not obligated to) the Contractor, where required, in obtaining clearance through the Customs of Constructional plant, materials and other things required for the Works.

4.25 Protection of Environment

The contractor shall comply with the Safety, health and Environmental manual of the Employer and shall submit a detailed Site safety manual and Environmental plan as **specified in special Conditions of Contract**. Nothing extra shall be payable to the Contractor on this account and his tender price shall be inclusive of expenditure required to be incurred for working as per SHE Manual.

The Contractor shall take all reasonable steps to protect the Environment (both on and off site) and to limit damage and nuisance to people and property resulted from pollution, dust, noise and other results of his operations.

The Contractor shall ensure that emissions, surface discharges and effluent from the Contractor's activities shall not exceed the values indicated in the Specification and shall not exceed the values prescribed by applicable laws. The Contractor will ensure strict compliance of provisions in regard to protection of environment of Special Conditions of Contract.

4.26 Tools, Plants and Equipment supplied by the Employer

Except for any specific item mentioned in the Special Conditions of Contract, the Contractor shall provide all tools, plants and equipment for the works. In respect of such exceptional tools, plants and equipment committed to be provided by the Employer under terms and conditions specified in the Special Conditions of contract, the Contractor shall take all reasonable care and shall be responsible for all damages or loss caused by him, his representatives, sub-contractors or his workmen or others while they are in his charge. On completion of the works, the Contractor shall hand over the unused balance of the tools, plants and equipments to the Employer in good order and repair, fair wear and tear

expected, and shall be responsible for any failure to account for the same or any damage done thereto. The decision of the Engineer as to the amount recoverable from the Contractor on this account shall be final and binding.

4.27 Sheds, Stores, Yards

It shall be the responsibility of the Contractor to provide at his own expense the required sheds, store houses, and yards for both Permanent and Temporary Works and provide free access to the Engineer and the Engineer's Representative who will have right of inspection including that of instructing the Contractor to remove a particular material from the stores and not to use the same on the works.

4.28 Use of Explosives

Explosives if required on the work shall be used by Contractor only with prior Approval of the Engineer and in the manner and to the extent permitted by him. The contractor shall be responsible for safe upkeep of such explosives in a special magazine as per the law on explosives as well as for taking all the precautions in the usage of the explosives with proper license and at contractor's cost, sole risk and responsibility. The contractor shall hold the Employer harmless and indemnify for the above.

4.29 Employer's Material

4.29.1 Materials to be supplied by the Employer

Except for items mentioned in the Special Conditions of Contract, the Contractor shall provide all materials for the works. Material, if any, to be provided by Employer will be done only in a phased manner as per pre-approved program, against a bank guarantee for the value of the Material and at terms and conditions for issue, upkeep, usage, return and recovery of such materials as specified in special conditions of contract.

4.30 Discoveries

Any thing of historical importance or of significant interest discovered on the site shall be the property of the Employer. The Contractor shall notify the Engineer of such discoveries promptly and carry out Engineer's instructions for dealing with that.

4.31 Excavated materials

Materials of any kind obtained from execution of the site shall be property of the Employer and shall be disposed of as the Employer/Engineer may decide.

4.32 Housekeeping at the Site of works

The contractor shall at all times, maintain the site free from unnecessary obstructions and shall store or dispose neatly any Contractor's equipment and surplus materials. The contractor shall clear away and remove from site any wreckage, rubbish or Temporary Works no longer required.

On completion of the works, the contractor shall clear away and remove from site all constructional plant, surplus material and Temporary Works. He should leave the whole of the site and works in a clean, tidy and workmen like condition to the satisfaction of the Engineer. In case, the contractor even fails to clear the site as required within seven days from the issue of notice than site shall be cleared by the Engineer/Employer and cost thereof shall be recovered from the dues of the contractor.

On completion of work the contractor shall also clear away the labour camps, hutments and other related installations and restore the land to its original condition to the satisfaction of the Engineer within 45 days of the physical completion of the work, failing which it will be done by engineer on Contractors cost.

No final payment in settlement of the accounts for works shall be made till site clearance and clearance of labour camps etc. shall have been affected by the Contractor in addition to any other condition necessary for settlement of such final payment.

4.33 Extraordinary Traffic

4.33.1 Avoidance of damage to roads

The contractor shall use every reasonable means to prevent any of the highways or bridges communicating with or on the routes to the site from being damaged or injured by any traffic of the contractor or any of his representatives or sub-contractors and, In particular, shall select routes, choose and use vehicles and restrict and distribute loads so that any such extraordinary traffic as will inevitably arise from the moving of plant and material from and to the site shall be limited., as far as reasonably possible, and so that no unnecessary damage or injury may be occasioned to such highways and bridges. Should any such damage or injury occur, the cost of rectification or reconstruction thereof shall be borne by the Contractor and he shall indemnify the Employer fully against any claim on this account.

4.33.2 Special Loads

Save in so far as the Contract otherwise provides, the contractor shall be responsible for and shall pay the cost of strengthening any bridges or altering or improving any road communicating with or on the routes to the site to facilitate the movement of Contractor's plant or materials or execution of Temporary works and the Contractor shall indemnify and keep indemnified the Employer against all claims for damage to any such road or bridge caused by such movement, including such claims as may be made directly against the employer, and shall negotiate and pay all claims arising solely out of such damage.

4.33.3 Settlement of Extraordinary Traffic Claims

If, notwithstanding **sub clause 4.33.1**, any damage occurs to any bridge or road communicating with or on the routes to the site arising from the transport of materials or plant, the contractor shall notify the engineer with a copy to the Employer, as soon as he becomes aware of such damage or as soon as he receives any claim from the

authority entitles to make such claim. Where under any law or regulation the hauler of such materials or plant is required to indemnify the road authority against damage, the Employer shall not be liable for any costs, charges or expenses in respect thereof or in relation thereto. In other cases, the Employer shall negotiate the settlement and pay all sums due in respect of such claim and shall indemnify the Contractor in respect thereof and in respect of all claims, proceedings, damages, cost, charges and expenses in relation thereto. Provided that if and so far any such claim or part thereof is, in the opinion of the Engineer, due to any failure on the part of the contractor to observe and perform his obligations under **Sub Clause 4.33.1** and **4.33.2** then the amount, determined by the Engineer, after due consultation with the Employer and the Contractor, to be due to such failure shall be recoverable from the contractor by the Employer and may be deducted by the employer from any monies due or to become due to the contractor and the Engineer shall notify the Contractor whenever a settlement is to be negotiated and, where any amount may be due from

4.34 Disclosure of Relationship

If the contractor or any partner of the contractor or Director of the Contractor's company is closely related to any of the Officers of the employer or the Engineer, or alternatively, if any close relative of an officer of the Employer or the Engineer has financial interest/stake in the Contractor's firm, the same shall be disclosed by the Contractor at the time of filling his tender. Any failure to disclose the interest involved, shall entitle the Employer to rescind the Contract, without payment of any compensation to the contractor. The Contractor shall note that he is prohibited from developing such interest during the Contract period without specific approval of the employer.

4.35 Opportunity for other Contractors

4.35.1 Reasonable Opportunity

The contractor shall, in accordance with the requirements of the Engineer, afford all reasonable facilities for any other contractor who may be carrying out, on or adjacent to any site any work not included in the Contract but required by the Employer, any utilities undertaking or other duly constituted authority.

The contractor shall, on the written request of the engineer, make available to any such other contractor or to the employer or any such authority, any roads or ways for the maintenance of which the contractor is responsible, for which no additional payment shall be made by the Employer.

4.35.2 Inspection of work of other Contractors

If any part of the contractor's work depends upon the work of another Contractor, he shall inspect and promptly report to the Engineer any defects in such work that may render it unsuitable for such proper execution. The contractor's failure to so inspect and report shall constitute acceptance of the other Contractor's work as fit and proper

except as to defects which may develop in the other Contractor's work after execution of his work.

4.36 Progress Reports

Unless otherwise stated in special conditions of Contract, monthly progress shall be prepared by the Contractor and submitted to the Engineer in six copies. The first report shall cover the period up to the end of the first calendar month following the commencement of works in accordance with **sub clause 10.1**. Reports shall be submitted monthly thereafter, each within 7 days after the last day of the period to which it relates.

Reporting shall continue until the contractor has completed all work, which is known to be outstanding at the completion date stated in the completion Certificate for the works:

Each report shall include:

- a. Charts and detailed descriptions of progress, including each stage of design **(in accordance with sub clause 4.1)**, contractor's document, procurement, manufacture, delivery to the site, construction, erection and testing; and including these stages for work by each subcontractor.
- b. Copies of quality assurance documents, test results and certificates of materials.
- c. List of notices given by either party.
- d. Safety statistics, including details of any hazardous incidents and activities relating to environmental aspects and public relations; and
- e. Comparisons of actual and planned progress, with details of any events or circumstances which may jeopardize the completion in accordance with Contract and measures being adopted to overcome delays.
- f. Labour welfare compliance report if desired by the Engineer in accordance with **sub clause 7.1**.
- g. Details of labour, engineers, tools & plants at site during the month under reference.
- h. Any problem/hindrances faced by the contractor in proper execution of the work.

5. CORRUPT OR FRAUDULENT PRACTICES

5.1 The employer requires that the bidders/contractors observe the highest standards of ethics during Tendering and execution of this contract. In pursuance with this policy, the employer:

- a. Defines, for the purpose of these provisions, the terms set forth below as follow:

- i. **“corrupt practice”** means the offering, giving, receiving or soliciting of any thing of value to employer, engineer or any of their employees, influence in the procurement process or in contract execution; and
 - ii. **“fraudulent practice”** means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of the employer, and includes collusive practice among bidders (prior to or after bid submission) designed to establish bid prices at artificial non-competitive levels and to deprive the employer of the benefits of free and open competition.
- b. will reject the tender for the work or terminate the Contract if the employer determines that the bidder/Contractor has engaged in corrupt or fraudulent practices.
 - c. Will declare a Contractor ineligible, either indefinitely or for a slated period of time, to be awarded a Contract/s if he at any time determines that the Contractor has engaged in corrupt or fraudulent practices.

5.2 Action against Contractor on termination of Contract under this clause

In the event of termination of contract under sub clause 5.1 action will be taken in terms of clause 11. 4.2.

6.0 INSURANCE

6.1 Requirements

Before commencing execution of works, unless stated otherwise in the special conditions of Contract, it shall be obligatory for the contractor to obtain at his own cost stipulated insurance cover under the following requirements:

- i. Contractor' all risk and third party cover.
- ii. Liability under **workmen's compensation Act 1923, Minimum wages Act,1948 and Contract labour (Regulation and Abolition) Act 1970.**
- iii. Accidents to staff, engineers, supervisors, and others who are not governed by Workmen's Compensation Act.
- iv. Damage to material, machinery and works due to fire, theft, accident etc.
- v. Any other risk may be specified in the special Conditions of contract.

6.2 Policy in Joint names of Contractor and Employer

The policy referred to under **Sub clause 6.1 (i)** above shall be obtained in the joint names of the Contractor and the Employer and shall inter-alia provide coverage against the following, arising out of or in connection with execution of Works, their maintenance and performance of the contract.

- i. Loss of life or injury involving public, employee of the contractor, or that of Employer and Engineer, labour etc.

- ii. Injury, loss or damages to the works or property belonging to public, government bodies, local authorities, utility organizations, contractors, employer or others.

6.3 Currency of Policy

The policies shall remain in force through out the period of execution of the works and till the expiry of the defects Liability period. If the contractor fails to effect or keep in force or provide adequate cover in the insurance policies mentioned in **sub Clause 6.1**, or any other insurance he might be required to effect under the contract, then, the Employer may effect and keep in force any such insurance or further insurance and the cost and expenses incurred by him in this regard shall be deductible from payments due to the contractor or from the Contractor's Performance security.

The contractor will be responsible to indemnify the employer to pay damages if any becoming recoverable during the period of expiry of the policy and its renewal. It is a condition of the contract that contractor will renew the policy well in time and employer will not be held responsible if policy is not renewed by employer due to failure of the contractor.

7. FACILITIES FOR LABOUR

7.1 Provision of accommodation

The contractor shall provide at his own expense, all necessary accommodation and the welfare facilities for his stag and labour. This includes good practices like provision of temporary crèche (Bal Mandir) where 50 or more women are employed at a time. All accommodation shall be maintained in a clean and sanitary condition, by the contractor at his cost and provision of law of land in force and enacted from time to time.

The contractor shall have a labour welfare Organisation which shall be responsible for labour welfare and compliance with prevalent labour laws, statutes and guidelines. In this context, the contractor is also required to familiarize himself with DFCC labour welfare Fund Rules as specified in Special conditions of Contract and comply with the same.

The Contractor shall prepare and submit compliance reports of adherence to labour laws as and when desired by the Engineer.

7.2 Compliance with Rules for Employment of labour

The contractor shall be responsible for compliance with all the statutes, guidelines and rules for the time being in force regarding engagement of labour by the Contractor or through his petty Contractors or Sub contractors. The contractor shall also ensure that he or his sub-contractors fully comply with all labour laws relating to engagement of labour and other related labour laws as in force and enacted from time to time.

7.3 Labour to be Contractor's employee

If the contractor directly or through petty contractors or sub contractors supplies any labour to be used wholly or partly under the direct orders and control of the Engineer or the Employer, whether in connection with any work being executed by the Contractor or otherwise for the purposes of the Employer, such labour shall, for the purpose of this clause, be deemed to be persons employed by the contractor. The contractor shall

indemnify the employer for any claim or payment becoming payable to labourers due to his failure to comply with labour laws.

7.4 Preservation of Peace

The contractor shall be responsible for preservation of peace at the site and its neighborhood by Contractor's employees, Representatives, petty contractors, sub contractors etc. In case, deployment of a special Police Force, becomes necessary at or near site, during the tenure of works, the expenses for the same shall be borne by the contractor.

7.5 Health and safety

Precautions shall be taken by the contractor to ensure the health and safety of his staff and labour. The contractor shall in collaboration with and to the requirements of the local health authorities, ensure that medical staff, first aid facilities, other medical facilities, sick bay and ambulance are available at the accommodation and on the site at all times, and that suitable arrangements are made for all necessary welfare and hygiene requirements and for the prevention of epidemics. The contractor shall maintain records and make reports concerning health, safety and welfare of persons and damage to property, as per the Engineer's requirement and will ensure complete compliance with relevant clauses of Employer's safety, Health and Environmental manual (SHE manual), which shall be binding on the contract.

7.6 Use of Intoxicants

The contractor shall ensure that no labour or employee is permitted to work at the Site in an intoxicated state or under influence of drugs.

8.0 Staff and Labour

8.1 Engagement

The contractor shall make his own arrangements for the engagement of all staff and labour at its own cost.

8.2 Labour Laws

In dealing with labour and employees, the Contractor and his sub-Contractors (including piece rate and petty Contractor) shall comply fully with all laws and statutory regulations pertaining to engagement, payment and upkeep of the labour in India.

8.3 Rates of Wages and Conditions of Labour

Full compliance of statutory requirements apart, the Contractor shall pay rates of wages and observe conditions of labour not less favourable than those established for the trade or the industry where the work is carried out.

8.4 Working Hours

The contractor if required, after notifying the Engineer shall carry out Works during night hour or in shifts unless specifically provided in the contract. No increase in rates or

extra payment shall be admissible for night work. The Contractor shall provide adequate lighting and safety arrangement at his own cost.

8.5 Persons in the service/retired of employer/engineer

- a. the contractor and/or any of his sub contractors shall not recruit or attempt to recruit, staff and labour from amongst the employer and the Engineers personnel.
- b. Employment of Retired Officer/Engineer
The contractor and/or any of his sub contractors at the Tendering stage or during constructing stage will not employ any retired employee of Employer or Engineer of the Employer in any capacity unless such employee has completed at least two years post retirement period or has obtained the no-subjection certificate from Employer for being employed with the contractor. It will be responsibility of the contractor to collect the Employer's no objection certificate from such retired employee and submit the same back to the employer.
- c. In case of non compliance of above, in addition to any or several of the courses, referred in **sub-clauses 11.4.1 and 11.4.2** being adopted by the Employer the contractor on termination of the contract for the aforesaid reasons will have no claim whatsoever against the employer.

8.6 Claim on account of violation of Labour Laws

The contractor shall be solely accountable for violation of any labour law by it, its petty contractors or sub contractors and will pay any such claim/damage to the authorities forthwith on demand. If any moneys shall, as a result of any instructions, directions or decisions from the Authorities or claim or application made under any of the labour laws or regulations, be directed to be paid by the Employer, such moneys shall be deemed to be moneys payable to the Employer by the Contractor and he will pay the same to the Employer forthwith on demand, without demur and without asking for any reasons/explanations from the Employer. On failure of the contractor to repay the Employer any moneys paid or to be paid by it as aforesaid within seven days after the same shall have been demanded, the Employer shall be entitled to recover the amount from any moneys due or incurring to the contractor under this or any other contract with the Employer.

8.7 Report of accidents to labour.

The Contractor shall be responsible for safety of all employees, employed by him on works, directly or through petty contractors or sub-contractors, and shall report accidents to any of them, however, and wherever occurring on Works, to the Engineer or the Engineers Representative, and shall make every arrangement to render all possible assistance and to provide prompt and proper medical attention. The compensation for affected Workers or their relatives shall be paid by the contractor in such cases with utmost expeditious in accordance with the Workmen's Compensation Act.

9. QUALITY CONTROL

The contractor shall institute a quality assurance system to demonstrate compliance with the requirements of the contract. The system shall be in accordance with the

requirements in the Special conditions of Contract. The Engineer shall be entitled to audit any respect of the system. Compliance with the quality assurance system shall not relieve the contractor of any of his duties, obligations or responsibility in the contract.

9.1 Manner of Execution

All plant, materials, goods and workmanship shall be

- a. of the respective kinds described in the contract and in accordance with the Engineer's instructions.
- b. Subject from time to time to such Tests as the Engineer may require at the place of manufacture, fabrication, or on the site or any such other place or places as may be specified in the contract.

9.2 Contractor to provide everything necessary for Testing

The Contractor shall provide such assistance, instruments, machines, labour and materials as may be necessary for examining, measuring and testing any work and the quality, weight or quantity of any material used and shall supply samples of Materials before incorporation in the works for testing as may be selected and required by the Engineer.

9.3 Sources of Materials

Sources of materials being supplied shall be intimated to the Engineer and are subject to his approval. Materials that are not specified in the contract document shall conform to the relevant Indian Standards or in their absence conform to any International Standard approved by the Engineer.

9.4 Supply of Sample

Save as otherwise expressly provided in the contract, sample shall be supplied by the Contractor. The contractor will however, be fully responsible to comply with specifications as per contract.

9.5 Cost of Test

The cost of making any test shall be borne by the Contractor if such test is clearly intended by or provided for in the contract. If any test is ordered by the Engineer which is either:

- a. not so intended by or provided for in the contract, or
- b. though so intended or provided for is ordered by the Engineer to be carried out by an independent person at any place other than the site or the place of manufacture or fabrication of the materials tested.

Then the cost of such Test shall be borne by the Employer. If, however, the Test shows the workmanship or Materials not to be in accordance with the Contract, then the cost of such Test will be borne by the Contractor.

9.6 Correction of defects.

- i. if as a result of the examination, inspection, measurement or testing, any plant, materials or workmanship is found to be defective or not in accordance with the Contract, the Engineer may reject the same by giving notice to the contractor with the reasons. The contractor shall then promptly make good the defect and ensure that the rejected item complies with the contract.

Notwithstanding any previous test or certification, the Engineer shall have the authority to instruct the contractor.

- a. to remove from the site and replace any plant or materials which is not in accordance with the Contract.
 - b. Remove and re-execute any other work which is not in accordance with the contract.
 - c. Execute any work which is urgently required for the safety of the works, whether because of an accident, unforeseeable event or otherwise.
- ii. In case of default on the part of the contractor in carrying out such order, the Employer shall be entitled to employ and pay other parties, to carry out the same, and all expenses consequent thereof or incidental thereto, shall be recoverable from the contractor or may be deducted by the Employer from any money which may be due to the Contractor.

9.7 COVERING UP OF WORK

9.7.1 Examination of work before covering up

A work or part of work shall be covered up or put out of view, in the presence of the Engineer or the Engineer's Representative.

9.7.2 Cost of uncovering the work already covered up

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, 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 Clause 9.7.1** and the works are found to be executed in accordance with the Contract, the expenses of uncovering, make openings in or through, reinstating and making good the same, shall be borne by the Contractor.

10.0 TIME MANAGEMENT

10.1.1 SIGNING OF AGREEMENT

The Engineer/Employer shall prepare the Agreement in the Performa prescribed annexed as Annexure C of these conditions, duly incorporating all the terms of agreement between the two parties. However, the successful tenderer shall arrange the necessary Non-judicial stamp papers of requisite value and attend the DFCC office to execute the agreement within two weeks of the date of receipt of the "Letter of

acceptance” duly acknowledged and signed by the successful tenderer. Up on executing the agreement the original agreement will be retained by the employer and one copy of the Agreement duly signed by the Employer and the Contractor through their authorised signatories, will be supplied by the Employer to the contractor.

10.1.2 Commencement of work

The contractor shall commence the works on the date specified in the letter of Acceptance or if no date is specified in the Letter of acceptance, on the date specified in an instruction in writing to that effect from the Engineer. Thereafter, the contractor shall proceed with due diligence, without delay, and in accordance with the programme or any revised or modified programme of the works. Time will be the essence of the contract and time for completion shall run from the date the contractor is to commence the works under this clause.

10.2 Programme of Work

The contractor shall submit a detailed programme to the Engineer after receipt of the Letter of acceptance, not later than 28 days from the date of receipt of Letter of Acceptance. The contractor shall also submit a revised programme whenever the Engineer finds that the previous programme is inconsistent with actual progress or with the contractor’s obligations. Each program shall include:

- a. the order and procedure in which the Contractor proposes to carry out the works
- b. the sequence and timing of inspections and tests specified in the contract.
- c. A supporting report which includes a general description of the method which the contractor intends to adopt and of major stages in the execution of the works.

No significant alterations to the programme or to such arrangements and methods shall be made without obtaining the approval of the Engineer. Approval by the Engineer to the Programme of Works shall not relieve the Contractor of any of his responsibilities or obligations under the contract.

10.3 Handing Over, Possession and use of Site

No land belonging to or in possession of the Employer shall be occupied without the permission of the Engineer or the Employer. The Contractor shall not use, or allow the site to be used for any purpose other than that of executing the works.

The employer shall give the contractor, right to or right of access to or possession of all parts of site as the case may be from time to time as stated to in the contract and as conforming with the requirement of the programme of the works.

In the event of any failure or delay by the employer or the engineer, to hand over to the contractor the possession of site necessary for execution of works then such failure or delay, shall in no way affect or vitiate the contract or alter the character thereof, or entitle the contractor to damages or compensation thereof but in any such case, the engineer shall grant such extension or extensions of time to complete the work as in his opinion is/are reasonable without penalty and with PVC as applicable.

10.4 Access To Site of work**10.4.1 Access for Engineer**

The Contractor shall allow the Engineer or the Engineer's representative, at all times access to the site, and to any place where work in connection with the Contract is being carried out or is intended to be carried out and to any place where materials or plant are being manufactured, fabricated and/or assembled for the works. The contractor shall ensure that sub contracts if any shall contain provisions entitling the Engineer or any person authorized by him to have such access.

10.4.2. Access Road and Way Leaves

Providing access roads/way leaves to the site will be contractor's responsibility at his own cost.

10.5 Time for Completion

The time allowed for execution and completion of the works or part of the works as specified in the contract, in accordance with contract conditions, shall be the essence on the part of the contractor subject to any requirement in the contract as to completion of any portion or portions of the works before completion of the whole work. The Contractor shall fully and finally complete the whole of the works comprised in the contract.

10.5.1 Time to continue to be the essence of the Contract inspite of extension of time.

It is an agreed term of the contract that notwithstanding grant of extension of time under any of the sub-clauses mentioned herein, time shall continue to be the essence of contract on the part of the Contractor.

10.6 Delay

Failure or delay by the employer or the Engineer, to hand over to the contractor the site necessary for execution of works, or any part of the works, or to give necessary notice to commence the works, or to provide necessary drawings or instructions or clarifications or to supply any material, plant or machinery, which under the contract, is the responsibility of the Employer, shall in no way affect or vitiate the contract or alter the character thereof; or entitle the contractor to damages or compensation thereof but in any such case, the Engineer shall extend the time period for the completion of the contract. As in his opinion is/are reasonable.

In case of delay on the part of the contractor, the contractor shall be liable to pay liquidated damages in addition to any other compensation for the damages suffered by the Employer. This is without prejudice to the right of the Employer to rescind the contract in terms of **Clause 11.4**

10.7 Extension of time for completion not on Contractor's fault

The time with which, the works or any phase or part of the work is to be completed, may be extended by the Engineer by such further period of time as may reasonably reflect delay in completion of works notwithstanding due diligence and the taking of all reasonable steps by the contractor to avoid or reduce such delay, caused by any of the following events.

- i. **“Force Majeure”** referred to in **clause 19.0**
- ii. the issue of any instruction or major violation by the Engineer.
- iii. The contractor not being given possession of or access to the site or any part.
- iv. Instruction of the engineer to suspend the works and the Contractor not being in default as to reasons of suspension.
- v. Acts or omissions of other contractors in executing the work not forming part of this contract and on whose performance, the performance of the contractor necessarily depends.
- vi. Any act of prevention or breach of contract by the Employer and not mentioned in this clause.
- vii. Any order of Court restraining the performance of the contract in full or in any part thereof.
- viii. Due to extra or additional work ordered by the engineer for execution.
- ix. Due to modifications, if any in the contract which necessitates extension of time
- .x. Any other event or occurrence which, according to the employer is not due to the contractor’s failure or fault.

However, the contractor shall not be entitled to any extension of time where the instructions or acts of the Employer or the Engineer are necessitated by or intended to cure any default of or breach of contract by the contractor. If the contractor considers himself to be entitled to an extension of time for completion, he shall give notice to the Engineer of such intention as soon as possible and in any event within 28 days of the start of the event giving rise to the delay, together with any notice required by the contract and relevant to such clause.

10.7.1 Contractor to apply for extension of time

In case, the contractor feels that work cannot be completed within the specified period in the contract than he shall be responsible for requesting extension of the date as he may consider necessary as soon as cause thereof shall arise and in any case not less than one month before the expiry of the original date for completion of the works giving detailed reasons for delay in completion of the work.

10.8 Extension of time for delay due to Contractor and Liquidated damage

10.8.1 Extension of time for delays due to contractor

If the delay in the completion of the whole works or a portion of the works, for which an earlier completion period is stipulated, is due to the contractor’s failure or fault, and the Engineer is of the view that the remaining works or the portions of works can be completed by the contractor in a reasonable and acceptable short time, then, the Engineer may allow the contractor extension or further extension of time at its discretion with liquidated damages, for completion as he may decide.

10.8.2 Liquidated damages

In case the Engineer decides to extend the contract with liquidated damages for delays due to contractor, in that case without prejudice to any other right or remedy available to the Employer, the liquidated damages shall be levied at the rate of 0.1 percent of the

contract value for the Works for each week or part of the week the contractor is in default subject to a maximum of 5% of the total Contract value.

If the delay relates to a portion of the works with a separate and earlier completion period, the contract value shall be restricted to the cost of that portion of the works only.

The decision of the Engineer as to the liquidated Damages payable by the Contractor under this clause shall be final and binding.

10.8.2.1 Consequences of Objection by the contractor for grant of extension with LD

In case the contractor does not agree/raise any objection to the grant of extension with levy of the liquidated damages then action will be taken under clause 11.4.2 for termination of contract. In case no objection is raised by the contractor within 7 days of issue of sanction for extension then it will be deemed that contractor has accepted extension with LD. No claim/dispute shall be entertained later on this account.

10.9 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 is at any time, in the opinion of the Engineer too slow to ensure timely completion of the works or any part thereof, the Engineer may so notify the contractor in writing. The contractor shall thereupon take such steps as are necessary or in default of taking such steps, shall take such steps as the Engineer may reasonably instruct to expedite progress so as to complete the works or any part thereof within date of completion. The contractor shall not be entitled to any additional payment for taking such steps.

If any step taken by the Contractor in meeting his obligations under this Sub clause cause the Employer to incur additional costs, such costs shall be recoverable from the Contractor and shall be deducted by the Employer from any monies due, or become to the Contractor.

10.10 Suspension

10.10.1 Suspension of work.

The Contractor shall, on the order of the Engineer, suspend the works or any part thereof, for such time and in such manner, as the Engineer may consider necessary, and shall during such suspension properly protect and secure the works as it is necessary in the opinion of the Engineer.

The Contractor shall not be entitled to extra cost, damages or loss of any anticipated profit during the period of suspension of work. However, the contractor shall be entitled to such extension of time for completion of work, as the Engineer may consider proper, having regard to the period of such suspensions.

If the suspension of the whole of the works or any part or group of the works exceeds 12 weeks, the contractor shall have the option to ask for closure of the contract, or deletion from the Contract of that part of works which has been suspended by giving 28 days notice to the Engineer for restart of work. If no permission is granted then treat suspension as

default of employer and terminate/omit that part of the work/contract after giving 14 days notice.

11 TERMINATION OF CONTRACT

11.1 Termination for Employer's Convenience

- (i) The Employer may terminate the Contract by giving notice to the Contractor with effect from the date stated in the notice, for its convenience and without need to give reasons.
- (ii) The Contractor must comply with the instructions of the Employer to wind down and stop work and the Contractor must leave the Site by the date stated in the termination notice and remove all Temporary Works it has brought on to the Site except for those items identified in the termination notice as to be retained on the Site.
- (iii) After termination under **Clause 11.1**, subject to its other rights under the Contract, the Employer shall pay to the Contractor:
 - a. the value of approved Materials actually brought to the Site and reasonably required to execute the Works during next three months, as per approved programme, and
 - b. Value of Work completed up-to-date by the Contractor at rates specified in the Contract, after taking into account any deductions, retentions, setoff
 - c. In addition, a sum not exceeding 2% (two percent) of the value of the work remaining incomplete on the date of Termination notice taking effect after adjusting the variation in cost of work as permissible under the contract.
- (iv) the payment as above are full compensation for termination under this clause and the Contractor has no claim for damages or other entitlements whether under the Contract or otherwise.
- (v) Any remaining tools, plants, equipments and surplus Materials of Employer with Contractor will be returned to the Employer at Employer's depot at Contractor's cost. In case of failure of the Contractor to do so, the Employer will be entitled to recover their cost from the Contractor from the amount becoming due to the Contractor or from any other money due in any other Contracts. The decision of the Engineer of amount to be recovered will be final decision and full credit at rates initially charged to the Contractor shall be allowed for such Materials. Similarly the Employer shall be entitled to recover the cost of unreturned material, plant, equipment and tools from the Contractor where such Materials have been supplied free of cost and plant, equipment and tools free of cost or on lease basis to the Contractor as stipulated in the Special Conditions of Contract.
- (vi) Provided further, that any diminution of quantities against individual items of the Contract, merely as a variation when the work is completed, shall not constitute foreclosure of Contract in terms of this clause, and no compensation or payment whatsoever as per this clause will be due or payable to the Contractor on that account.
- (vii) The Contract shall only be settled as above after furnishing no claim certificate by the Contractor and relieving the employer from all contractual liabilities under the contract.

11.2 Termination for Default of Employer

- i. In the event of the Employer:

- a) failing to pay to the Contractor the amount due without reasonable cause, under any certificate of the Engineer, within ninety days after the same shall have become due under the terms of the Contract, subject to any deduction that the Employer is entitled to make under the Contract, or
- b) becoming bankrupt or, being a company, going into liquidation, other than for the purpose of a scheme of reconstruction or amalgamation then, the Contractor may give notice requiring the Employer to remedy the default within 28 days after receipt of the notice. If the Employer fails to remedy the default or fails to propose steps reasonably acceptable to the Contractor to do so and in that case, the Contractor may terminate the Contract after issue of 14 days notice to the Employer with a copy to the Engineer. In this case, the Contractor shall be compensated as per **Sub clause (iii) of 11.1**

The Engineer's decision on the account payable on this account shall be final and binding.

11.3 Rescission Of Contract Due To Death Of Contractor/Partner

If a Tenderer expires after the submission of his tender or after the acceptance of his tender, The DFCC shall deem such tender as cancelled without financial repercussions on each side. If a partner of a firm expires, after the submission of their tender or after the acceptance of their tender, the DFCC shall deem such tender as cancelled without financial repercussions on each side unless the firm retains its character. The heir of the Contractor or remaining partner of the firm shall only be paid for the work executed at site and nothing extra shall be paid.

11.4 Termination Of Contract Due To Contractor's Default

11.4.1 Notice to Correct

If the Contractor fails to carry out any obligation under the Contract, the Engineer may by notice require the Contractor to make good the failure and remedy it within a specified time as the Engineer may deem reasonable.

11.4.2 Conditions Leading To Termination Of Contract

The Employer shall be entitled to terminate the Contract if the Contractor or any one of its constituents,

- a) fails to comply with a notice under Sub clause 11.4.1 of GCC
- b) abandons or repudiates the Contract
- c) without reasonable excuse fails to commence the Works in accordance with the Contract
- d) sub Contracts the whole of the Works or assigns the Contract without Approval of the Employer as per provision of the contract.
- e) becomes bankrupt or insolvent or goes into liquidation except voluntary liquidation for the purpose of amalgamation or reconstruction

- f) persistently disregards instructions of the Engineer or contravenes any provisions of the Contract,
- g) fails to adhere to the agreed programme of work by margin of 10% of the stipulated period or 21 days, whichever is earlier, or fails to complete the Works or parts of the Works within the stipulated or extended period of completion, or is unlikely to complete the whole Work or part thereof within time because of poor record of progress;
- h) fails to remove Materials from the Site, or pull down and replace work, after receiving notice from the Engineer to the effect that the said Materials or Works have been condemned or rejected.
- i) fails to take steps to employ competent and/or additional staff and labour.
- j) fails to afford the Engineer or his representative proper facilities for inspecting the Works or any part thereof.
- k) indulges in corrupt or fraudulent practices as explained in Clause 5.1 (a) (ii) of GCC
- l) does not agree with the decision of the Engineer to grant extension with LD under clause 10.8.2 of GCC.
- m) fails to comply with provision of clause 8.5 of GCC.
- n) fails to advise change in constitution of the firm and insist for this change if the same is not acceptable to the Engineer/Employer as per clause 21.4 of GCC.

In any of these events or circumstances, the Employer may upon giving 14 days notice to the Contractor, terminate the Contract and expel the Contractor from the Site. The Employer shall give a 2 days notice to the Contractor towards the end of this 14 day period following which the Contractor shall remove all his plants and Machinery from the Site within these two days. The Employer's election to terminate the Contract shall not prejudice any other rights of the Employer under the Contract.

After termination of the contract, the Engineer/Employer shall be entitled to get the balance work completed by another agency, the manner & method in which such work is completed, shall be in the entire discretion of the Engineer whose decision shall be final.

On termination of Contract due to Contractor's default

- a. On termination of the contract, the security deposit of the contractor shall be forfeited and the performance guarantee shall be encashed and the balance work shall be got done without risk & cost of the original contractor.
- b. Final bill of the terminated contract shall be drawn and any legitimate amount due to the contractor after making necessary deductions as per provisions of contract shall be released on furnishing a no claim certificate relieving the employer of contractual liabilities under the contract.

11.4.3 Non-exercise of power not to constitute waiver.

Provided always that in case any of the powers conferred upon the Employer **Sub Clause 11.4.1 and sub clause 11.4.2** above, shall have become exercisable, and the same may

not have been exercised, the non-exercise thereof shall not constitute waiver of any of the conditions thereof.

11.4.4 Execution of balance work by another agency.

In case of termination, original contractor shall be debarred from participating in the tender for executing the balance work. If the failed contractor is a JV or a partnership firm, then every member/partner of such a firm would be debarred from participating in the tender for the balance work either in his/her individual capacity or as a partner of any other JV/partnership firm.

12. VARIATIONS

12.1 Authority to order modifications

Engineer acting on behalf of Employer shall have the authority to make any variation of the form, quality or quantity of the Works or part thereof, that in his opinion may be necessary at any time before whole completion of work. The Contractor shall execute and to be bound by each variation ordered by the Engineer and shall do any of the following:

- a) increase or decrease the quantity of any item or part of work included in the Contract.
- b) Omit any such work included in the Contract.
- c) add a new part or item of the Work not included in the Contract.
- d) change the character or quality or kind of any such work.
- e) Change the levels, lines, positions and dimensions of any part of the Works.
- f) Execute additional work of any kind necessary for the completion of the Works or
- g) change any specified sequence or timing of construction of any part of the Works.

No such variation shall in any way vitiate or invalidate the Contract. The decision of the Engineer under this clause shall be final.

12.2 Variations to be authorized in writing.

All Variations shall be recorded in a written instruction/s from the Engineer and shall not be implemented by the Contractor without such an instruction in writing from the Engineer. In urgent cases, verbal instructions of the engineer shall be implemented but the same must be confirmed immediately thereafter. On receipt of an instruction from the Engineer to execute variation, the Contractor shall forthwith proceed to carry out the variation and be bound to these conditions in doing so as if such variation was stated in the Contract. The work shall not be delayed for fixing the rates/prices under this Sub clause.

12.3 Value Engineering or Innovation

12.3.1 Value Engineering Proposals

The Contractor may submit to the Employer, in writing at its own cost, value engineering proposals for modifying the Specifications for the purpose of reducing construction costs. The value engineering proposal shall not impair the essential character, functions or characteristics or the Work, including service life, economy

of operation, ease of maintenance, desired appearance, or design and safety standards.

12.3.2 Value Engineering Proposals – Contents

If the Employer requires it, and if the Contractor wants to proceed with the proposal, the Contractor must provide (at no cost to the Employer) a detailed report, acceptable to the Employer and which shall include:

- (a) a general description of the original Contract requirements for the Works and the proposed changes.
- (b) an itemized list of all the proposed modifications to the Drawings and Specifications.
- (c) an itemized list of all Work and goods affected by the value engineering proposal.
- (d) a detailed estimate of the construction cost based on the original Contract requirements and based on the proposed changes.
- (e) any resultant time extensions or reductions for the Contract.
- (f) statement to the extent of minimum saving expected. The Contractor's cost of preparing value engineering proposal shall be excluded in determining the estimated net savings in construction basis.

12.3.3 Value Engineering Proposals – Employer Review

The Employer may in his sole discretion, accept or reject the value engineering proposal or any part thereof and determine the estimated net saving in the construction cost. The Employer shall not be liable for delays or damages to the Contractor due to any failure of the Employer to accept or act upon any value engineering proposal submitted pursuant to this Clause. If the submitted value engineering proposal is similar to a change/variation already under consideration by the Employer, the Employer may make such changes as deemed fit with no extra cost.

12.3.4 Amendments – Employer Issuance

If the value engineering proposal is acceptable to the Employer in whole or in parts, it will accept by execution of an amendment. Such amendment shall identify all the changes in the Specifications, Contract Period etc, shall specify net savings on construction costs and shall provide that the Contractor be paid 30% of saved net savings amount based on the difference between the amount contained in the Contract and the estimated net savings both as determined by the Employer.

12.3.5 Contractor's Acceptance and Payment.

The Contractor shall either accept or reject any proposed amendment executed by the Employer pursuant to this section within 5 working days of its receipt date from the Employer. If the Contractor does not reject the same in the period stipulated above, the amendments shall be deemed to be accepted by the Contractor and shall become a variation to the

Contract. The Contractor's acceptance shall be unconditional and compensation of 30% of the value shall constitute the full compensation. The Contractor will be paid this 30% but not more at the time of final payment on Engineer's certification that the net savings as intended by value engineering have been achieved.

12.4 Variation In The Bill Of Quantities.

- i. The quantities of items shown in the Bill of Quantities are approximate, and liable to vary during the actual execution of the Work. Some items/group of items may have to be altered, added or omitted. The Contractor shall be bound to carry out and complete the stipulated work as instructed by the Engineer, irrespective of the magnitude of variations including additions, alterations or omissions in the Bill of Quantities, individual items or group of items, specified in the Bill of Quantities.
- ii. Such variations shall be paid as follows
 - a) At the accepted rates of the Contract for variation in quantities to the extent of 25% for increase.
 - b) In case the increase is more than 25%, the rate for the varied quantity beyond 25% shall be 98% for variation between 25 to 40% and 96% between 40 to 50% and beyond 50% the rates will be negotiated. There will be no variation limit for reduction and accepted rate will only apply.
 - c) In case Engineer introduces an item for which the Contract does not contain any rates or prices applicable to the varied Works, the rate of such items shall be derived, wherever possible, from rate for similar items available in the Bill of Quantities of the accepted Tender. In case this is not possible, the rate may be decided on the following basis:
 - i. Cost of Materials at current market rates, as actually utilized in the final finished Permanent Works, including a reasonable percentage for wastage and transportation.
 - ii. Cost of enabling Works if any (unless provided for separately) worked out on the above basis but with less stringent quality Specifications minus salvage value of serviceable material released after completion of work and cost of material released as scrap.
 - iii. Cost of labour as determined by the engineer used at the site of work at rates under Payment of Minimum Wages Act for the area of work for each category of worker, further enhanced by a percentage of 30% of the aforesaid rates to account for labour not directly utilized at Site and other ancillary and incidental expenses on labour.
 - iv. Hire charges for Plant & Machinery, scaffolding, shuttering, forms, etc., required to be used at the site of the work. The

- tools used by various trades shall not be counted as Plant & Machinery for this purpose.
- v. An amount of 20% of items (i), (ii), (iii), and (iv) above to allow for Contractor's overheads, taxes, and profits. This percentage shall also apply to estimated cost of Materials supplied free to the Contractor.
 - vi. In all cases where extra items of work are involved, for which there are no rates in the accepted Bill of Quantities, the Contractor shall give a notice to the Engineer, of at least 7 days before the need for their arises.

In the event of disagreement in respect of items (f) and (g) above, 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 Employer. Until such time as rates or prices are agreed or fixed, the Engineer shall determine provisional rates or prices to enable on account payments to the Contractor.

Alternatively, in the event of disagreement, the Contractor shall have no claim to be executed with the responsibility of execution of extra quantities beyond 25% / new items executed through any agency.

However, if the Engineer or the Employer so directs the Contractor shall be bound to carry out any such additional quantities beyond the limits stated above original quantities and or new items and the disagreement or the difference regarding rates to be paid for the same, shall be settled in the manner laid down under the conditions for the settlement of dispute.

iii. Daywork

The Engineer may, if in his opinion it is necessary or desirable issue an instruction that any varied work or new item of work shall be executed on a daywork basis. The Contractor shall be then paid for such item based on the actual expenditure made on daily basis under the terms set out in daywork schedule included in the Contract and at the rates and prices affixed by him in the Tender.

The Contractor shall furnish such receipts or other vouchers as may be necessary to prove the amounts paid and before ordering Materials shall submit to the Engineer the quotations for the same for his Approval. The Contractor shall furnish to the Engineer or his representative, a daily list (with name, occupation and shift time) of all workmen deployed on the work, in duplicate for checking and Approval. The Contractor shall submit to the Engineer a priced statement of labour, material, plant, etc., actually used on the work, together with the output of work at the end of each calendar month and / or as soon as the work is completed. The payment for the new item of work will be certified by the Engineer based on this submission.

13. PRICE VARIATION

13.1 Accepted rate applicable till the completion of work.

The rates as per the accepted Bill of Quantities shall be applicable subject to variation only to the extent of permissible price variation as per **Clause 13.2** below and Price Variation Formula in Special Conditions of Contract.

13.2 Price variation formula.

The payment as per the Contract shall be subject to adjustment in accordance with the Price Variation Formula, and other terms and conditions as provided in "Special Conditions of Contract."

13.3 Price Variation for Varied Items

Normally, no price variation clause shall be applicable to new rates not originally included in the Bill of Quantities. It shall, however, be open to the Engineer to accept price variation clause in such cases where the rates are not based on actuals and the work is likely to continue for more than one year.

13.4 Price Variation During Extended Period of Contract.

Price adjustment as applicable during the extended period of Contract will be regulated as per provisions in the Special Conditions of Contract unless the extension has been granted due to Contractor's fault.

14. ADVANCES

The Employer shall make following advance payments on interest @ 5% per annum:

14.1 Mobilisation Advance.

Mobilisation advance shall be paid upto 10% of original Contract Value payable in two equal installments. The first installment shall be paid after mobilization has started and next installment shall be paid after satisfactory utilization of earlier advance.

Mobilisation advance shall be paid against prescribed bank Guarantee proforma from a Scheduled Commercial Bank. (Annexure D of these conditions)

In case of mobilization advance, the Contractor, once the 50% of mobilization advance has been recovered, shall have a one time option to produce the Bank Guarantee for the mobilization advance by the amount recovered.

14.2 Advance against Plant and Machinery.

Plant and machinery advance shall be paid only for purchase of new plant & machinery required for the work upto 10% of original Contract Value subject to maximum of 80% of the cost of the said new plant & machinery so purchased. However, for highly specialized plant and equipment additional advance upto 5% of Contract Value may be considered at Employer's discretion,

14.3 Payment of advance against hypothecation of plant

Plant and machinery advance shall be paid against hypothecation of plant and machinery to the Employer and against prescribed bank guarantee proforma from a Schedule Bank. (Annexure E of these conditions)

14.4 Advance against Material at Site.

This will be made available as per special conditions of contract.

14.5 Written Request for Advances.

Advances as admissible, shall be payable only on Contractor's written request to the Employer.

14.6 Recovery of Advances

- a. The recovery of Advances shall commence when 20% of the original Contract Value of the work has been paid. The advances shall be recovered upto 80% completion of work. As far as possible the recovery of advances shall be limited to 30% of an account bill.
- b. No advance, except material advance, shall be given after 40% of the original contract amount has been paid.
- c. In case of advance against Materials, the amount consumed every month shall be recovered from the next month on account bill.
- d. The Contractor shall always have the option to have the recoveries commenced and / or completed earlier, and / or to have recoveries affected in installments of higher amount and also to repay part or whole of the advance by direct payment rather than through On-account Bills.

14.7 Interest in Case of Delay due to contractor's default in Repayment of Advances.

Should there be any delay in the progress and completion of work, as a result of which it is not possible to recover the advance and interest thereon, before the original date of completion stipulated in the Contract, then the interest to be charged from the Contractor on the remaining portion of the advance beyond the completion date specified in the Contract, shall be, 12 % per annum simple interest.

14.8 Advances to be Used only for This Work.

The advances shall be used by the Contractor strictly for the purpose of the Contract, and for the purpose for which they are paid. Under no circumstances, shall the advances be diverted for other purposes. Any such diversion shall be construed as a breach of the Contract and the Contractor shall be liable to return the advance at once and to pay interest at 12% per annum simple interest.

15 CONTRACT PRICE AND PAYMENTS

15.1 Rates For Items Of Work.

The Contractor shall be paid only at accepted rates for finished work as per approved construction Drawings. Where such rates are not available the Contractor shall be paid as per Clause 12.0 read with Clause 12.4 "Variation" of these Conditions.

15.1.1 Rates accepted for BOQ are for complete item of work

The rates entered in the accepted Bill of Quantities of the Contract, shall provide for Works duly and properly completed in accordance with these Conditions of Contract, Special Conditions of Contract and the Specification and Drawings, together with such enlargement, extension, diminution, reduction, alteration or addition, as may be ordered in terms of conditions of Contract, and without prejudice to the generality thereof, shall inter-alia be deemed to include and cover all charged relating to labour and superintendence thereof, supply including all cost and freight of Materials, stores, equipments, profiles, moulds, cuttings, centerings, scaffoldings shuttering, machinery, derricks, tackles, ropes, pegs, posts, tools and all apparatus and plants, required at / for the work, and contingencies , complete in all respects, except such items as may be specified in the Special Conditions of Contract to be supplied to the Contractor by the Employer. The rates quoted shall also include:

- Erection, maintenance and removal of all Temporary Works and Buildings.
- All watching, lighting, pumping and draining unless otherwise provided for.
- All barriers and arrangements for safety of the property, utilities, public or of employees/workers during the execution of Works.
- All sanitary and medical arrangements for labour camps as may be prescribed.
- The setting out of all Works of construction, repair and up-keep of all centre lines, benches, brackets, etc.
- Site clearance.
- All taxes, royalties, duties, cess, octroi and other levies payable to various authorities except as provided in **Sub-clause 15.1.1. and 15.1.3**

15.1.2 Commercial Taxes

- i. The rates shall be all inclusive (of all taxes, duties, royalties etc.) as applicable under law of land.
- ii. The Employer intend to apply for and is likely to receive exemptions on customs duty, central excise duty, reimbursement of VAT or cess/levy or any other tax as applicable. The Contractor shall maintain meticulous records of all the taxes & duties paid and provide the same as and when required by the employer, so that employer is able to avail the reimbursement.

In case such exemption is granted by the concerned Govt. authorities than contractor is required to avail such reimbursements based on exemption certificates/ Govt's orders and it shall be obligatory on part of the contractor to get the reimbursements from the said statutory authorities and pass them to DFCC. In case of failure recovery equal to the reimbursement due will be made from the contractor's dues.

15.1.3 Nothing extra payable over the accepted rates

Subject to **Sub-clause 15.1.1** above, nothing extra shall be payable over the quoted rates, notwithstanding any provision to the contrary in any law for the time

being in force, save and except what is specifically provided in General or Special Conditions of Contract.

15.1.4 Changes in cost due to subsequent legislation.

If after the date for submission of tender, there is change/increase/decrease in various taxes through national or state statute, ordinance, decree or other law or any regulation or bye-law of any local or other duly constituted authority which causes additional or reduced cost to the contractor as otherwise permissible in the execution of the contract, such additional or reduced cost shall be determined by the engineer and shall be added to or deducted from the contract price as the case may be.

15.2 Payment on actual measurements

The quantities set out in the Bill of Quantities, are the estimated quantities and not the actual quantities of work to be executed by the Contractor. The Contractor shall be paid for the Works, at applicable rates based on the actual measurements.

Measurements of the work in progress shall be taken by the Contractor in presence of the Engineer. These measurements shall be recorded at such intervals, as in the opinion of the Engineer shall be proper having regard to the progress of the work in the Measurement Books to be supplied by the Engineer.

The Contractor or his authorized representative shall sign the result of the measurements, which shall also be signed by the Engineer or the Engineer's representative as an acknowledgement and acceptance of the accuracy thereof.

The Engineer or the Engineer's Representative shall have the right to delete or correct any measurement if it is found at a later stage that the work is incomplete, defective and / or not conforming to the Specifications.

15.3 Payment Currency

The mode of payment in the Contract will be Indian Rupees unless specified otherwise.

15.4 On Account Payment

15.4.1 Procedure for On-Account payment.

- a. The Contractor shall be entitled to be paid from time to time normally once in a calendar month, by way of "On-account" bills, only for such Works, as, in the opinion of the Engineer, the Contractor has executed in terms of the Contract.
- b. The Contractor shall submit the on-account bills, by the date stipulated by the Engineer, in the prescribed performa, supported with measurements.
- c. After preliminary scrutiny and certification by the Engineer, payment of 80% of the certified amount shall be made by the Employer within 7 days. The amount certified shall account for all deductions, including statutory deductions, recoveries for advances and any amounts due from the Contractor. The balance 20% shall be paid within 28 days, from the date of the preliminary certification of the bill by the Engineer.
- d. Such payments made by the Employer, shall not constitute any acceptance of the measurements or bill of quantities by the Employer and the Employer shall have the

right to alter, modify, reduce or diminish the quantities or classification entered in the Measurement Books or Bills. The Employer shall have right to recover any amount paid in the earlier bill from any subsequent bill and should the amount to be recovered be more than the amount of the subsequent bill, the Contractor shall on demand from the Engineer or Employer immediately refund the extra amount to the Employer within 7 days, failing which he shall have to pay interest @ 12% per annum till the said extra amount is paid back by him. In addition to above, if contractor claims more on-account payment than due, second time, the facility of making 80% on-account payment within 7 days shall be withdrawn.

15.4.2 Non-recording of measurements

The Engineer reserves the right not to record the measurements, and/or not to entertain an on-account bill, when the work done during the period is less than 25% of the work to be executed for the period as per agreed programme

15.4.3 On-Account Payment without prejudice

'On account' payments made in respect of work; done or Materials delivered by the Contractor, shall be without prejudice to the final accounts, (except where measurements are specifically noted in the measurement book as "final measurements" and have as such been signed by the Contractor), and shall not be considered by itself to be evidence of any facts, stated in or to be inferred from such payments or of any work done or Materials supplied, or of the manner of its execution.

15.5 Final Measurements And Payments.

- (i) Soon after the issue of the Completion Certificate, as per **Clause 17.1 and 17.2** the Engineer shall have the final measurements taken, recorded and signed, as in the case of interim measurements referred to in **Clause 15.2**. A joint account of any plant, equipment and Materials issued by the Employer to the Contractor, shall also be prepared and signed jointly.
- (ii) Based on above, the Contractor shall submit a draft Final Bill with supporting documentation at the earliest but not later than 60 days from the issue of the Completion Certificate.
- (iii) The Engineer shall check the bill within 60 days of its receipt and return the bill to the Contractor for correction if any. Employer shall pay 75% of the undisputed amount of the bill to the Contractor at the stage of returning the bill.
- (iv) The Contractor shall resubmit the bill with corrections within 30 days of the return together with a written discharge in form of "No Claim Certificate" (Annexure F of these conditions) representing full or final settlement of all money due to the Contractor under or in connection with the Contract or a list of total unsettled claims in accordance with **Clause 16.1**.

The Employer, shall, on receipt of the Certificate, arrange to make payment, subject always to any deductions under these presents, due to the Contractor, within a period of further 30 days failing and after which the Employer shall be liable to pay interest at 10% per annum which shall be compounded every 3 months. Provided always, that, no interest

shall be payable on any amount disallowed or withheld under Clause 15.10 and 16.2 or disputed by the Engineer or the Employer in any case.

The Engineer for his pure convenience retains the right to instruct the Contractor to furnish the details of both on account and final bill in soft form as well.

15.6 Round Off

In every payment to the Contractor, sums of less than fifty paise shall be omitted and sums of fifty paise and more up to one rupee shall be reckoned as one rupee.

15.7 Payment By Cheque/E-Payment.

All payments to the Contractor will be made by cheque or through "E-Payment" as decided by the Employer.

15.8 Tax Deduction at Source.

Tax deductions will be made at source as per statutory requirement from every payment made to the Contractor at rates notified from time to time.

15.9 Production of Vouchers

- I. The Contractor shall, whenever required by the Engineer, produce or cause to be produced for examination by the Engineer, any quotation, invoice, cost or other account books, vouchers, receipts, letters, memoranda or any copy of or extract from any such documents and also furnish information and returns, as may be required, relating to the execution of this Contract or relevant for verifying or ascertaining the cost of execution of this Contract or ascertaining the Materials supplied by the Contractor are in accordance with the Specifications laid down in the Contract. The Engineer's decision on the question of relevancy of any documents, information or returns shall be final and binding on the parties.
- II. If any part or item of the work is allowed to be carried out by a sub-Contractor, assignee or any subsidiary or allied firm through the Contractor, and shall have power to examine and inspect the same. The above obligations are without prejudice to the obligations of the Contractor under any statute, rules or orders.

15.10 Withholding Any Lien For Sums Claimed.

- i. The Employer shall have lien over all or any moneys that may become due and payable to the Contractor under the Contract, and / or over the deposit of Performance Guarantee/Security deposit or any other amount or amounts made under the Contract and which may become payable to the Contractor.
- ii. And further, unless the Contractor pays and clears immediately on demand any claim of the Employer, the Employer shall at all times be entitled to deduct the amount of the said claim from the moneys, securities and / or deposits which may have become or will become payable to the Contractor under these presents, or under any other Contract or transaction whatsoever between the Employer and the Contractor even if the matter stands referred to Arbitration. The Contractor shall have no claim for any interest or damage whatsoever in respect of any amounts withheld or treated as withheld under the lien referred to above and duly notified as such to the Contractor.

15.11 Signature On Receipts For Payments.

Every receipt of payment to Contractor including refund of the Performance Security shall be signed by the person authorized to do so on his behalf. In the event of death of any of the Contractor's partners in case the Contractor is a partnership firm, during the currency of the Contract, it is hereby expressly agreed that every receipt by any one of surviving Contractor's partners, shall, if so signed as aforesaid, be a good and sufficient discharge as aforesaid, provided that nothing in this Clause shall be deemed to prejudice or affect any claim, which the Employer may hereafter have against the legal representatives of any Contractor's partner so dying, for or in respect of breach of any of the conditions of the Contract. Provided also that nothing contained in this clause shall be deemed to prejudice or affect the respective rights and obligations of the Contractor's partners, or of the legal heirs/representatives of any deceased Contractor/partner interse.

15.12 Post Payment Audit.

It is an agreed term of the Contract, that the Employer reserves to himself the right to carry out a post payment audit and /or technical examination of the Works, and the Final bill including all supporting vouchers, abstracts, etc, and to make a claim on the Contractor for the refund of any excess amount paid to him, if as a result of such examination, any over-payment to him is discovered to have been made in respect of any work done or alleged to have been done by the Contractor, under the Contract. If any under-payment is discovered, the same shall be paid by the Employer to the Contractor. Such payments or recoveries, however, shall not carry any interest.

16 CLAIMS & LIENS IN RESPECT OF CLAIMS IN OTHER CONTRACTS.

16.1 Claims

The Contractor shall send to the Engineer's Representative once in every three months an account giving particulars, along with full details and justification, of all claims for any additional payment to which the Contractor may consider himself entitled and of all extra or additional work ordered by the Engineer which he has executed during the preceding three months. No final or interim claim for payment for any such work or expense will be considered which has not been included in such particulars.

16.2 Lien in Respect of Claims in Other Contracts.

Any money due to the Contractor either alone or jointly with others, including the Performance Guarantee/Security deposit amount returnable to him, may be withheld or retained by exercise of lien by the Employer, against any claim of the Employer in respect of payment of a sum of money arising out of or under any Contract other than the present Contract made by the Contractor, alone or jointly with the Employer. It is an agreed term of Contract that the sums of money so withheld or retained under this clause by the Employer, shall be kept withheld or retained till the claims arising out of or under the other Contract, are either mutually settled or determined by the Arbitrator, or by the competent Court, as the case may be and the Contractor will have no claims of interest or damage in this regard whatsoever.

17. COMPLETION AND MAINTENANCE CERTIFICATE

17.1 Completion and Completion Certificate

After completion of the Work the Contractor shall serve a written notice of such completion, (whether of the whole of the Works or any part of the work for which a separate date of completion is stipulated in the Contract) to the Engineer. The Engineer or Engineer's representative within 30 days of the receipt of this notice shall conduct a complete joint survey of the Works (including carrying out any Tests as prescribed in the Contract) and prepare a Defects List jointly with the Contractor. The defects pointed by the Engineer or Engineer's representative shall be rectified by the Contractor within 30 days and there after acceptance report be signed jointly by the Contractor and Employer or Engineer on his behalf. This report shall be treated as "Completion Certificate".

17.2 Completion Certificate not to Absolve.

The Contract requires defects free Completion and completion certificate issued as per Completion Certificate Sub-Clause 17.1 above, shall not absolve the Contractor from his liability to make good defects, imperfections and shrinkages or faults, which may appear during the Defects Liability Period specified in the Contract, arising in the opinion of the Engineer from any design for which the Contractor is responsible or any Materials or workmanship being not in accordance with Drawings or Specifications or instructions of the Engineer. These defects shall be rectified by the Contractor at his own cost and if he fails to do so, the Engineer may employ labour, plant and machinery and Materials or appoint another agency or Contractor, to amend and make good such defects, imperfections, shrinkages and faults all costs for the same, and, shall be borne by the Contractor and shall be recoverable from any moneys due to him under this or any other contract.

17.3 Maintenance Certificate.**17.3.1 Definition of 'Defects Liability Period'.**

In the Contract, the expression "Defects Liability Period", shall mean the Defects Liability Period named in the Special Conditions of Contract, calculated from the date of completion of the Works, as certified by the Engineer in accordance with **Clause 17.1 and 17.2.**

17.3.2 Maintenance Certificate

The Contract shall not be considered as completed, until a Maintenance Certificate shall have been signed by the Engineer at the end of Defects Liability Period stating that the Works have been completed and maintained to his satisfaction.

17.3.3 Final Approval by Maintenance Certificate.

No certificate other than 'Maintenance Certificate' referred to in **Sub-clause 17.3.2** of these conditions, shall be deemed to constitute final Approval by Engineer of discharge of Contractor's obligations under the Contract.

17.4 Cessation of Employer's Liability.

The Employer shall not be liable to the Contractor for any matter, arising out of or in connection with the Contractor, or the execution of the Works, unless the Contractor shall have made a claim in writing in respect thereof within 60 days from the date of completion of the Works.

17.5 Unfulfilled obligations.

Notwithstanding the issue of Maintenance Certificate, the Contractor and the Employer, shall remain liable for the fulfillment of any obligation incurred under the provision of the Contract, prior to the issue of the Maintenance Certificate, which remain unperformed at the time such certificate is issued, and for the purpose of determination of the nature and extent of any such obligation, the Contract shall be deemed to remain in force between the parties hereto.

18 RISK & RESPONSIBILITY.

18.1 Contractor's Care of Work.

- i. The Contractor shall take full responsibility for the care of Works from the commencement of the Works until the date stated in the Completion Certificate for the whole of the Works is issued pursuant to **Clause 17.1 and 17.2.**
- ii. The Contractor shall not demolish, remove or alter structures or other facilities on the Site without prior Approval of the Engineer.
- iii. If the Engineer shall issue a Completion Certificate in respect of any part of the Permanent Works for which a separate date of completion is stipulated as provided for in **Sub Clause 17.2**, the Contractor shall cease to be liable for the care of that part of the Permanent Works from the date stated in the Completion Certificate in respect of that part for which responsibility to take care will shift to Employer.
- iv. Provided further that the Contractor shall take full responsibility for the care of any outstanding work, which he shall have undertaken to finish during the Defects Liability Period. If any loss or damage happens to Works during the period for any cause while the Contractor shall be responsible for the care thereof, the Contractor shall rectify the loss or damage at Contractor's risk and cost so that the Works conform with the Contract.
- v. In the event of any such damage, loss or injury happening from any of "**Force Majeure**" for the portion of work already measured, the Contractor if and to the extent required by the Engineer shall undertake the repair and make good the defect at the cost of the Employer.
- vi. The Contractor shall also be liable for any damage to the Works occasioned by him in the course of any operations carried out by him for the purpose of completing any outstanding work or complying.

18.2 Urgent Repairs.

If, by reason of any accident, or failure, or other event occurring to or in connection with the Works, or any part thereof or proximity thereof, either during the execution of the Works, or during the Defects Liability Period, any remedial or other work or repair shall, in the opinion of the Engineer or the Engineer's Representative, be urgently necessary and the Contractor is unable or unwilling to do such work or repair or other work at once, the Engineer may authorize the carrying out of such repair or other work by a person other than the Contractor. If the work or repair so got done by the Employer is work which, in the opinion of the Engineer, the Contractor was liable to do at his own expense under the Contract, all expenses incurred by the Employer in carrying out the same shall be recovered by the Employer from the Contractor.

18.3 Damage To Employer's Property, Private Property And Life.

The Contractor shall be responsible for all risks to the Works and for trespass and shall make good, at his own expense, all loss or damage to the Works themselves or to any

other property of the Employer or the lives, persons and property of others from whatsoever cause in connection with Works until they are taken over by the Employer; in case the Employer is called upon to make good any such costs, loss or damages, or to pay compensation (including that payable under the provisions of Workmen's Compensation Act or any statutory amendments thereof or under any other law of land applicable to contract) to any person or persons sustaining damage as aforesaid by reason of any act, omission or negligence on the part of the Contractor the amount of any costs or charges (including costs and charges in connection with legal proceedings), which the Employer may incur in reference thereto, shall be charged to the Contractor. This will include any payment made by the Employer for any legal proceedings.

18.4 Indemnity By Contractor.

18.4.1 Indemnity Against All Actions of Contractor.

The Contractor shall hold and save harmless and indemnify the Employer, from and against all actions, suits, proceedings, loss, costs, damages, charges, claims and demands of every nature and description brought or recovered against the Employer, by reason of any act or omissions of the Contractor, his Representative or his employees, in the execution of the Works or in the guarding of the same. All sums payable by way of compensation under these conditions shall be considered reasonable compensation payable to the Employer, without reference to the actual loss or damage sustained, and whether or not any damage shall have been sustained.

18.4.2 Indemnity Against All Claims of Patent Rights And Royalties.

The Contractor shall defend, indemnify and save harmless the Employer from and against all claims and proceedings for or on account of infringements of any patent rights, design, trademark name or copyright or other protected rights in respect of any construction equipment, Plants. Materials, goods or design (submitted by the Contractor pursuant to his obligations under the Contract) used for or in connection with or for incorporation in the Works and from or against all loss, expense, costs or damages whatsoever in respect of such claims or proceedings or in relation thereto, except here such infringement results from compliance with the design or Specifications provided by the Engineer.

18.5 Indemnity By Employer.

The Employer shall indemnify and hold harmless the Contractor against all claims, damages, losses, and expenses in respect of:

- a. Bodily injuries or damages to persons which is attributable to any negligence, willful act or breach of the Contract by the Employer.
- b. Where the injury is contributed partially by the other Contractor, the proportion of the liability to be borne by each party will be decided by the Engineer.

19 FORCE MAJEURE

If, at any time during the currency of the Contract, the performance in whole or in part by either party of any obligation under this Contract shall be prevented or delayed by reasons of any war, hostilities, invasion, acts of public or foreign enemies, rebellion, revolution, insurrection, civil commotion, sabotage, large scale arson, floods, earthquake, large scale epidemics, nuclear accidents any other catastrophic unforeseeable circumstances, quarantine restrictions, any statutory rules , regulations, orders or requisitions issued by a

Government department or competent authority or acts of God (hereinafter referred to as "event") then, provided notice of the happening of such an event as given by either party to the other within 21 days of the occurrence thereof.

- a. Neither party shall be reason of such event be entitled to terminate the Contract or have claim for damages against the other in respect of such non-performance or delay in performance.
- b. The obligation under the Contract shall be resumed as soon as practicable after the event has come to an end or ceased to exist.
- c. In case of doubt or dispute, whether a particular occurrence should be considered an "event" as defined under this clause, the decision of the Engineer shall be final and binding.
- d. Works that have already been measured shall be paid for by the Employer even if the same is subsequently destroyed or damaged as a result of the event. The cost of rebuilding or replacing any work that has been measured shall be borne by the Employer.
- e. If the Contract is terminated under this Clause, the Contractor shall be paid fully for the work done under the Contract, but not for any defective work or work done which has been destroyed or damaged before its measurement.

20. SETTLEMENT OF DISPUTES AND ARBITRATION.

20.1 Dispute To Be Referred To And Settled By Engineer At The First Place.

Should any dispute or difference of any kind whatsoever arise between the Employer and the Contractor, touching, in connection with, or arising out of the Contract, or subject matter thereof, or the execution of Works, whether, during the progress of Works or after their completion and whether before or after termination, abandonment or breach of Contract, it shall, in the first place, subject to the provisions under Sub-clause 17.4 be referred to and settled by the Engineer, who shall, within a period of sixty days after being requested in writing by either party to do so, give written notice of his decision to the Employer and the Contractor. The Engineer while considering the matters of dispute referred to him, shall be competent to call for any records, vouchers, information and enforce the attendance of the parties either in person or through authorized representatives, to sort out or clarify any issue, resolve the differences and to assist him to decide the matters referred to him. Subject to arbitration, as hereinafter provided, such decision in respect of every matter so referred shall be given by the Engineer and parties shall proceed with the execution of works with all due diligence irrespective of whether any of the parties goes in or desires to go in for arbitration. If no intimation of reference of any claim to arbitration has been sent to him by either the Employer or the Contractor within a period of sixty days from receipt of such notice, the said decision of the Engineer shall remain final and binding upon the Employer and the Contractor and the same shall be deemed to have accepted by them. The Employer or the Contractor shall not seek any arbitration thereafter.

20.2 Referring Of Dispute For Arbitration

If the Engineer shall fail to give notice of his decision, as aforesaid, within a period of sixty days after being requested or if either the Employer or the Contractor be dissatisfied with any such decision of the Engineer, then the matter in dispute shall be referred to arbitration as herein provided.

20.3 Dispute Due For Arbitration

Disputes or differences shall be due for arbitration only if all the conditions in Sub-clauses 20.1 and 20.2 are fulfilled.

20.4 Settlement of Disputes

The demand for arbitration shall specify the matters, which are in question, or subject of the dispute/s or difference/s as also the amount of claim itemwise. Only such dispute/s or difference/s in respect of which the demand has been made by the party/parties shall be referred to arbitration and other matters if any shall not be included in the reference.

20.5 Nomination of Arbitrators/Sole Arbitrator.

Matters to be arbitrated upon shall be referred to a sole Arbitrator if the total value of the claim is upto Rs 5 million and to a panel of three Arbitrators if total value of claims is more than Rs 5 million. The Employer shall provide a panel of three arbitrators which may also include DFCC officers for claims upto Rs 5 million and a panel of five Arbitrators which may also include DFCC officers for claims of more than Rs 5 million. The Employer at the time of offering the panel of Arbitrator(s) to be appointed as Arbitrator shall also supply the information with regard to the qualifications of the said Arbitrator nominated in the panel along with their professional experience, phone nos. and addresses to the contractor. The Contractor shall have to choose the sole Arbitrator from the panel of three and/or one Arbitrator from the panel of five in case three Arbitrators are to be appointed. The Employer shall also choose one Arbitrator from this panel of five and the two so chosen will choose the third arbitrator from the panel only. The Arbitrator(s) shall be appointed within a period of 30 days from the date of receipt of written notice/demand of appointment of Arbitrator from either party. Neither party shall be limited in the proceedings before such arbitrator(s) to the evidence or arguments put before the Engineer for the purpose of obtaining his decision.

No decision given by the Engineer in accordance with the foregoing provisions shall disqualify him from being called as a witness and giving evidence before the arbitrator(s) on any matter, whatsoever, relevant to dispute or difference referred to arbitrator/s. The arbitration proceedings shall be held in Delhi only. The language of proceedings that of documents and communication shall be English.

This is a condition of contract agreement /Arbitration that Arbitrators so nominated shall be professional Engineers/s. In case of 3 Arbitrators, one of the arbitrators shall be an accounts officer.

This is also a condition of contract that in case above procedure for nomination of arbitrator/s cannot be adopted due to whatsoever reason may be, then it will be deemed that no arbitration clause exist in contract agreement and normal law of land shall prevail to settle the disputes.

20.6 No Suspension of Work.

The reference to arbitration shall proceed notwithstanding that works shall not then be or be alleged to be complete, provided always that the obligations of the Employer, the Engineer and the contractor shall not be altered by reasons of arbitration being conducted during the progress of Works. Neither party shall be entitled to suspend the work to which the dispute relates on account of arbitration and payments to the Contractor shall continue to be made in terms of the Contract.

20.7 Award To Be Binding On All Parties.

The award of the sole arbitrator or a bench of three arbitrators shall be binding on all parties.

20.8 Rules Governing The Arbitration Proceedings.

The arbitration proceedings shall be governed by Indian Arbitration and Conciliation Act 1996, as amended from time to time including provisions in force at the time the reference is made.

20.9 Limitation of Time.

No dispute or difference shall be referred to Arbitration after expiry of 60 days from the date of decision by the Engineer, if notified, or from the date when the Engineer ought to have given his decision in terms of provisions under Sub-clause 20.1 in case of failure on the part of the Engineer to give notice of decision.

20.10 Interest on Awarded Amount

Where the arbitral award is for payment of money, no interest shall be payable on the whole or any part of the money for any period till the date on which the award is made.

20.11. Fee to Arbitrator/s

The cost of arbitration shall be borne by the respective parties. The cost shall inter-alia include the fees of the Arbitrator(s) as per the rates fixed by the DFCC from time to time.

21 NOTICES

21.1 Notices to Contractor

- i. All notices to the Contractor shall be served by post or telex or telefax or by hand to the Contractor or his authorized representatives
- ii. The Contractor shall, on award of the Contract, furnish to the Engineer, the name, designation, address and telephone, telex and telefax numbers and e-mail address of his representative referred to in **Clause 4.4**.

21.2 Notice to Employer and Engineer

All notices to the Employer or Engineer shall be served by post or telex or telefax, or by delivering by hand to the address nominated for the purpose.

21.3 Change of Address

Parties to the Contract may change the nominated address with a notice to all concerned failing which all correspondence made on given address will be deemed to have been duly received by the concerned parties.

21.4 Change in Constitution of Firm

The Contractor shall forth with notify the Employer of any change in constitution of the firm. It is agreed terms & conditions of contract that no such change will be made effective unless specifically approved by the Employer failing which contract is liable to be terminated under clause 11.4 of GCC. .

FORM OF AGREEMENT

TO BE EXECUTED ON A RS.100/- NON-JUDICIAL STAMP PAPER

Name of the work:

This Agreement is made on the ---- day of ----- 2007 between DFCC hereinafter called “the Employer” of the one part and M/s-----

hereinafter called “the contractor” of the other part.

Whereas the Employer is desirous that as Detailed in Section 2.0 - Scope of work “ hereinafter called the “them Works” and has accepted a Tender by the contractor for the execution and completion of such works.

NOW THIS AGREEMENT WITNESSETH as follows:

1. In this Agreement words and expression shall have the same meanings as are respectively assigned to them in the conditions of contract hereinafter

referred to. The following documents shall be deemed to form and be read and construed as

part of this Agreement viz. a. TENDER NO:

comprising of Notice Inviting Tender, Instructions to Tenderers, Scope of work, Technical specifications, Special Conditions of Contract and Bill of Quantities.

b. Your offer through your letter No. -----

c. Our Letter of acceptance No.:-----

In consideration of the payment to be made by the Employer to the contractor as hereinafter mentioned, the contractor hereby covenants with the Employer to

execute and complete the works by ----- and remedy any defects therein in conformity in all respects with the provisions of the contract. The Employer hereby covenants to pay the contractor in

consideration of the execution and completion of the works and the remedying of defects therein, the Contract price of Rs. ----- being the sum stated in the letter of acceptance subject to such additions thereto or deductions there from as may be made under the provisions of the contract at the times and in the manner prescribed by the contract.

IN WITNESS WHEREOF the parties hereto have caused their respective common Seals to be hereunto affixed / (or have hereunto set their respective hands and seals) the day and year first above written.

For and on behalf of the Contractor

For and on behalf of the Employer

Name of the official
Stamp/Seal of the contractor

Name of the official
Stamp/Seal of the Employer

In the presence of

In the presence of

Witness

Witness

Name
Address

Name
Address

No Claim Certificate

1. I/We Was/Were awarded the work namely

2. The work has been completed and jointly measured and full payment has been made to me/us in terms of the measurement so recorded and in accordance with provisions of work order/agreement.

3. I/We have no other claim against M/s DFCC

4. I/We have made payments to the labourers & sub contractors strictly as per labour laws and other rules/laws of land in force. M/s DFCC shall be responsible for any dispute arisen between me/us with labourers & sub contractors later on.

5. I/We hereby undertake and reiterate that I/We have given this No Claim Certificate with free consent and without any corrosion as such M/s DFCC stands relieved from all contractual obligations for above noted work order/agreement.

Thanking you,

Yours Faithfully,

Name of the Contractor
With date to be signed

Witness:-

1. Name

Full address with date

2. Name

Full address with date

Note:- In case any contractor is not willing to sign this no claim certificate before passing the final bill, then the matter may please be referred to Employer giving comments/reason as to why the contractor is not willing to sign the said no claim certificate. The final bill should only be passed after further instructions from employer.

Annexure A**FORM OF BANK GUARANTEE FOR TENDER SECURITY**

1. KNOW ALL MEN by these presents that we _____ (name of bank) having our registered office at _____ (Name of Country) (hereinafter called "the bank") are bound unto dedicated Freight Corporation of India Limited (herein after called "the employer") in the sum of Rs. _____ for which payment will and truly to be made to the said employer, the bank binds itself, its successors and assigns by these presents.
2. WHEREAS _____ (Name of Tenderer) (hereinafter called "the tenderer") has submitted its tender dated _____ for
AND WHEREAS the Tenderer is required to furnish a Bank Guarantee for the sum of Rs. _____ as Tender Security against the Tenderers offer as aforesaid.
AND WHEREAS _____ (Name of Bank) have, at the request of the Tenderer, agreed to give this guarantee as hereinafter contained.
3. We further agree as follows:
 - a. that the Employer may without affecting this guarantee grant time or other indulgence to or negotiate further with the Tenderer in regard to the conditions contained in the said tender and thereby modify these conditions or add thereto any further conditions as may be mutually agreed upo between the Employer and the Tenderer.
 - b. That the guarantee hereinbefore contained shall not be affected by any change in the constitution of our Bank or in the Constitution of the Tenderer.
 - c. That any account settled between the Employer and the Tenderer shall be conclusive evidence against us of the amount due hereunder and shall not be questioned by us.
 - d. That this Guarantee commences from the date hereof and shall remain in force till _____ (date to be filled up) (up to 150 days from the date of tender).
 - e. That the expression 'the tenderer and 'the bank' herein used shall, unless such an interpretation is repugnant to the subject or context, include their respective successors and assigns.
4. THE CONDITIONS OF THIS OBLIGATION ARE :
 - a. if the Tenderer withdraws his tender during the period of Tender validity specified in the Form of Tender , or
 - b. of the Tenderer does not accept the correction of his tender price in terms of Clause _____
 - c. if the Tenderer having been notified of the acceptance of his tender by the Employer during the period of tender validity:
 - i. fails or refuses to furnish the Performance Security in accordance with Clause _____
 - ii. fails or refuses to enter into a contract within the time limit specified in Clause _____

We undertake to pay to the Employer mere on demand without demur upto the above amount upon receipt of his written demand, without the Employer having to substantiate his demand provided that in his demand the Employer will note that the amount claimed by him is due to him owing to the occurrence of any one or more of the conditions (a), (b), (c) mentioned above, specifying the occurred condition or conditions.

Signature of
Authorized official of the Bank

Signature of the Witness

.....

Name of Official

Designation

name of the Witness

.....

Stamp/seal of the bank

.....

Address of the Witness

.....

FORM OF PERFORMANCE SECURITY (GURANTEE) BY BANK

(Refer Clause)

1. This deed of grantee made this day of Between Bank of (hereinafter called the “Bank”) of the one part, and Dedicated Freight Corridor Corporation of India Limited called the “Employer” of the other part.
2. Whereas Dedicated Freight Corridor Corporation of India Limite has awarded the contract for (hereinafter called the contract) to (hereinafter called the contractor). (Name of the Contractor)
3. AND WHEREAS the Contractor is bound by the said Contract to submit to the Employer a Performance Security for a total amount of Rs.....(Amount in figures and words).
4. Now we the undersigned(Name of the bank) being fully authorized to sign and to incur obligations for and on behalf of and in the name of(full name of the Bank), hereby declare that the said bank will guarantee the Employer the full amount of Rs.(Amount in figures and words)as stated above.
5. After the contractor has signed the aforementioned Contract with the Employer, the Bank is engaged to pay the Employer, any amount up to and inclusive of the aforementioned full amount upon written order from the Employer to imdemnify the Employer for any liability of damage resulting from any defects or shortcomings of the Contractor or the debts he may have incurred to any parties involved in the Works under the Contract mentioned above, whether these defects or shortcomings or debts are actual or estimated or expected. The Bank will deliver the money required by the Employer immediately on demand without delay and demur and without reference to the Contractor and without the necessity of a previous notice or of judicial; or administrative procedures and without it being necessary to prove to the Bank the liability or damages resulting from any defects or shortcomings or debts of the contractor. The bank shall pay to the Employer any money so demanded withstanding any dispute/disputes raised by the contractor in any suit or proceedings pending before any court, Tribunal or Arbitrator/s relating thereto and the liability under this guarantee shall be absolute and unequivocal.
6. This guarantee is valid till(the initial period for which this Guarantee will be valid must be for at least 6 months (six months) longer than the anticipated expiry date of defect liability period as stated in Clause
7. At any time during the period in which this guarantee is still valid, if the employer agrees to grant a time extension to the Contractor or if the contractor fails to complete the works within the time of completion as stated in the contract, or fails to discharge himself of the liability or damages or debts as stated in the Contract, or fails to discharge himself of the liability or damages or debts as stated under Para 5, above, it is understood that the bank will extend this guarantee under the same conditions for the required time on demand by the Employer and at the cost of the Contractor.
8. The Guarantee hereinbefore contained shall not be affected by any change in the Constitution of the bank or of the Contractor.

- 9. The neglect or forbearance of the Employer in enforcement of payment of any moneys, the payment whereof is intended to be hereby secured or the giving of time by the Employer for the payment hereof shall in no way relieve the bank of their liability under this deed.
- 10. The expressions "the Employer", "the Bank" and "the Contractor" hereinbefore used shall include their respective successors and assigns.
- 11. Notwithstanding anything contained herein:
 - a. our liability under this bank Guarantee shall not exceed Rs.....(Rupees)
 - b. This bank guarantee shall be valid upto
 - c. We are liable to pay the guarantee amount or part thereof under this bank Guarantee only and only if you serve upon us a written claim or demand on or before.....

In witness whereof I/We of the Bank have signed and sealed this guarantee on the day of(month) being herewith duly authorized.

For and on behalf of
Thebank
Signature of Authorized bank Official

Name
Designation
Stamp/seal of the Bank:.....
Signed, sealed and delivered
For and on behalf of the
Bank of the above

Name _____ in
The presence of :
Witness 1.
Signature
Name
Address

Witness 2.
Signature
Name
Address

FORM OF CONTRACT AGREEMENT

This agreement is made at New Delhi on the _____ day of _____ between dedicated Freight Corridor Corporation of India Limited hereinafter called 'the employer' of the one part and _____ (Name of Contractor) (Address of Contractor) _____ of _____ hereinafter called "the contractor" of the other apt.

Whereas the Employer is desirous that (***) certain Goods and Services should be provided and) the Works should be executed, viz ----- hereinafter called "the Works" and has accepted a Tender by the Contractor for the execution of defects therein. NOW THIS AGREEMENT WITNESSETH as followw:

1. In this agreement works and expression shall have the same meanings as are respectively assigned to them in the conditions of Contract hereinafter referred to.
2. the following documents shall be deemed to form and be read and construed as part of this Agreement, viz:
 - a. Notice inviting Tender (NIT)
 - b. Instructions to tenderers (ITT) (including Annexures)
 - c. Special conditions of Contract (SCC)
 - d. General conditions of Contract (GCC)
 - e. Specifications
 - f. Geotechnical Report and CWPRS Report
 - g. Tender drawings and specifications submitted by the Contractor.
 - h. Bill of Quantities.
 - i. Form of tender with appendix.
 - j. Letter of acceptance.
 - k. Addendums issued, if any
 - l. Other conditions agreed to and documented as listed below
 - i. Tenderer's work schedule as amended if required.
 - ii. Details of Quality assurance System and Organization
 - iii. Alternative Designs (If applicable)
 - iv. Statement of deviations (if applicable)
 - v. Guarantee for the system offered
 - vi. Any other item as applicable
3. In consideration of the payments to be made by the Employer to the Contractor as hereinafter mentioned, the contractor hereby covenants with the Employer to execute and complete the works by ** _____ and remedy any defects therein in conformity in all respects with the provisions o the contract.
4. The Employer hereby covenants to pay the Contractor in consideration of the execution and completion of the works and the remedying of defects therein. The Total Contract price of **Rs. _____ being the sum stated in the letter of acceptance subject to such additions thereto or deductions there from as may be

made under the provisions of the contract at the times and in the manner prescribed by the Contract.

5. OBLIGATION OF THE CONTRACTOR

The Contractor shall ensure full compliance with tax laws of India with regard to this contract and shall be solely responsible for the same. The Contractor shall submit copies of acknowledgements evidencing filing of returns every year and shall keep the Employer fully indemnified against liability of tax, interest, penalty etc. of the contractor in respect thereof, which may arise.

6. JURISDICTION OF COURT

The courts at Delhi/New Delhi shall have the exclusive jurisdiction to try all the disputes arising out of this agreement between the parties.

IN WITNESS WHEREOF the parties hereto have caused their respective Common Seals to be hereunto affixed/(or have hereunto set their respective hands and seals) the day and year first above written.

For and on behalf of the Contractor

For and on behalf of the Employer

Signature of the authorized official
Name of the official
Stamp/seal of the Contractor
SIGNED, SEALED AND DEVIVERED

Signature of the authorized official
name of the official
Stamp/Seal of the Employer

By the said

By the said

_____ Name

_____ Name

on behalf of the Contractor in the presence of:

on behalf of the Contractor in the presence of:

Witness _____

Witness _____

Name _____

Name _____

Address _____

Address _____

Note:

* to be made out by the Employer at the time of finalization of the Form of agreement

** Blanks to be filled by the Employer at the time of finalization of the Form of Agreement

*** TO BE DELETED IF NOT APPLICABLE

Annexure D

FORM OF BANK GUARANTEE FOR MOBILIZATION ADVANCE

1. Bank guarantee made thisbetween.....(hereinafter called “the bank”) of the One Part and Dedicated Freight Corridor Corporation of India Limited. (hereinafter called “the employer”) of the other Part.
2. WHEREAS Dedicated Freight Corridor Corporation of India Limited has awarded the Contract no..... for “.....” (hereinafter called “the contractor”) to Having its registered office at (hereinafter called “the Contractor”).
3. AND WHEREAS vide clause of the General Conditions of Contract, Mobilization Advance upto 10% (ten percent) of the original contract value of Rs...../- is payable to the contractor against bank guarantees, the contractor hereby applies for Mobilization Advance of 10% (ten percent) amounting to Rs...../- (Rupees.....) for completing preliminaries such as construction of site offices, depots, hiring of accommodation, labour hutments, arranging electricity and water supply and movement of staff, labour, plant and machinery
4. AND WHEREAS this Bank Guarantee is for Rs...../- (Rupees.....) being the 1st one of the two Bank Guarantees, totaling to the above Mobilization Advance amount of Rs...../-.
5. Now, we the undersigned, Bank of, being fully authorized to sign and to incur obligations for and on behalf of and in the name of Bank ofhereby declare that the said Bank will guarantee the Employer the full amount of Rs.-/- (Rupees.....) as stated above.
6. we, Bank of, do hereby unconditionally, irrevocably and without demur guarantee and undertake to apy the Employer immediately on demand any or all monies payable by the contractor to the extent of Rs.-/(Rupees.....) as aforesaid without any demur, reservation, context, recourse or protest and/or without any reference to the Contractor. Any such demand made by the Employer on the Bank shall be conclusive and binding notwithstanding any difference between the Employer and the Contractor on any dispute pending before any court, Tribunal, Arbitrator or any other authority. We agree that the guarantee herein contained shall be irrevocable and shall continue to be enforceable till the Employer discharges this guarantee.
7. This guarantee is valid till
8. At any time during the period in which this guarantee still valid of the Contractor fails to fulfill its obligation under para 6 above, it is understood that the bank will extend this guarantee under the same condition for the required time on demand by the Employer at the cost of the Contractor.
9. The Guarantee hereribefore contained shall not be affected by any change in the constitution of the Bank or of the Contractor.
10. The neglect or forbearance of the Employer in enforcement of payment of any moneys, the payment whereof is intended to be hereby secured or the giving of time by the Employer for the payment hereof shall in no way relieve the Bank of their liability under this Deed.
11. The expressions “the Employer”, “the bank” and “the Contractor” hereinbefore used shall include their respective successors and assigns.
Notwithstanding anything contained herein:
 - a. our liability under this Bank Guarantee shall not exceed Rs...../- (Rupees.....)
 - b. this bank Guarantee shall be valid upto.....

c. We are liable to pay the guaranteed amount or any part thereof under this bank Guarantee only and only if you serve upon us a written claim or demand on or before(date of expiry of Guarantee).

In witness whereof we of the bank have signed and sealed this Guarantee on theday ofbeing herewith duly authorized.

For and on behalf of the Bank of.....
Signature of Authorized Bank Official

Name _____

Designation _____

Stamp/Seal of the bank _____

Signed, sealed and delivered for and on
Behalf of the bank by the above named
..... in the presence of

Witness 1

Signature _____

Name _____

Address _____

Witness 2

Signature _____

Name _____

Address _____

PROFORMA FOR STATEMENT OF DEVIATIONS

1. The following are the particulars of deviations from the requirements of the Tender specifications:

| S.No | Clause | Deviations | Remarks (including justification) | Price adjustments for withdrawl of each deviation/s |
|------|--------|------------|---|---|
| | | | | |

2. The following are the particulars of deviations from the requirements of the “Instructions to Tenderers”, General Conditions of Contract” and “Special Conditions of Contract”.

| S.No | Clause | Deviations | Remarks (including justification) | Price adjustments for withdrawl of each deviation/s |
|------|--------|------------|---|---|
| | | | | |

Signature of Tenderer

Note:

- Where there is no deviation, the statement should be returned duly signed with an endorsement indicating ‘No deviations’.
- The Tenderer shall indicate price adjustment against each deviation, which he shall like to add to the tender price for withdrawing his deviations if the same are unacceptable to the Employer.