**AGREEMENT**

**Dated ……………………….**

**Between**

**Name of Employer**

**and**

**Name of Contractor**

Agreement

This Agreement made this date XXxx Month , 20XX at City , between Name of Employer , a Company registered under Companies Act having registered office at ……………………………………………………. ( hereinafter referred to as **Employers** which expression shall include its successors and assigns) of the first part and M/S Name of Contractor having register office at ……………………………………………………. (hereinafter referred to as **Contractor** with expression shall include its successors and assigns) of the other part.

Both Employer and Contractor shall collectively be referred to as ‘ Parties ’ and individually as ‘ Party ’.

Whereas the Employer is desirous of constructing a Nature of work (For e.g. 2B+G+12 storied Parking plaza cum Hotel cum Commercial building) and other allied works on its premises at Project address.

And whereas the Employers floated tender for the (For e.g. Electrical) work of the building.

And whereas the Contractor approached the Employer and quoted rates and submitted the tender and expressed its interest to execute the work.

And whereas negotiation took place between Employer and Contractor and ‘General Conditions’,’Special Conditions’,’Contract data’,’Technical specifications’, and ‘Schedule of rates’ have finalized.

And whereas in consideration of the aforesaid negotiation the Employer decided to award the contract to the Contractor for said Work.

And whereas the ‘Contractor’ agreed to undertake the said Work.

Now therefore, it has been agreed by and between the parties as per Table of Contents attached herewith , which is part and parcel of this agreement .

In witness whereof the parties put their respective signature and seal on the date, month and year written above.

As witness our hand

Signed by the said Employer:

Name:

Address:

Signed by the said contractor:

Name:

Address:

Witness (Employer part)

1. Signature :

 Date :

 Name & Address :

Witness (Contractor part)

2. Signature :

 Date :

 Name & Address :

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 **A) General conditions of Contract**

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 **I. GENERAL**

**1. Definitions**

 **1.1** Terms which are defined in the Contract Data are not also defined in the Conditions of Contract but keep their defined meanings. Capital initials are used to identify defined terms.

 **Schedule of rates** means the Final priced and completed Bill of Quantities in enclosure.

The **Completion Date or Handover date**  is the date of completion of the entire Works including testing , commissioning , complete in all respect suitable for obtaining NOC from relevant sanctioning Authority , as certified by the Engineer .

 The **Contract** is the Agreement between the Employer and the Contractor to execute, complete and maintain the Works.

 The **Contract Data** means the specific information to execute this agreement successfully.

 The **Contractor** is a person or corporate body whose bid to carry out the Works has been accepted by the Employer.

 The **Contractor's Bid** is the final completed Bidding document submitted by the Contractor to the Employer.

 The **Contract Rate** is the price stated against each item in the Schedule of rates and thereafter as adjusted in accordance with the provisions of the Contract.

 **Days** are English calendar days & **Months** are English calendar months

 A **Defect** is any part of the Works not completed in accordance with the Contract or permanently left in complete.

 The **Defects Liability Period** is the period mentioned in the Contract Data and calculated from the Completion Date or Handover date as mentioned above.

 **Drawings shall mean the drawings** prepared by the Consultants and issued by the Engineer and referred to in the specification and any modification of such drawings and such other drawings as may be issued by the engineer from time to time.

 The **Employer** is the party who will employ the Contractor to carry out the Works.

 The **Engineer** is the person or a Project Management Consultant team authorized by the Employer (or any other competent technical person appointed and notified to the Contractor to act in replacement of the Engineer) who is responsible for relevant communication with the Contractor , supervising the Contractor, administering the Contract, certifying payments due to the Contractor, issuing and valuing Variations to the Contract, awarding extensions of time, and valuing the Compensation Events.

 **Equipment** is the Contractor's machinery , tools and tackles brought temporarily to the Project site to execute the Works.

 The **Initial Contract Price** is the ‘Net Total’ value listed in the Schedule of rate but not necessarily the value of actual work done.

 The **Completion Time** is the number of months by which it is intended that the Contractor shall complete the Works. The Completion Time is specified in the Contract Data which is the essence of this Contract. The Completion Time may be revised only by the Employer by issuing a letter or executing a supplementary agreement.

 **Materials** are all inventories including consumables, used by the Contractor for incorporation in the Works.

 **Plant** is any integral part of the Works which is to have a mechanical, electrical, electronic or chemical or biological function.

 The **Project** **Site** is the area whose address is defined as such in the Contract Data.

 **Site Investigation Reports** are those which were relevant to the work and shared with the Contractor containing factual interpretative reports about the surface and sub-surface conditions at the site.

 **Specification** means the Specification of the Works specified in Technical specification & Schedule of rate of this contract and relevant IS Code or acceptable references and any modification or addition made or approved by the Engineer.

 The **Start Date** is given in the Contract Data. It is the date when the Contractor shall commence execution of the Works. It does not necessarily coincide with date of LOI or the Agreement date but it should not be more than 30 days from date of Agreement.

 A **Subcontractor** is a person or corporate body who has a Contract with the Contractor to carry out a part of the Work in the Contract which includes work on the Site.

 **Temporary Works** are works designed, constructed, installed, and removed by the Contractor which are needed for construction or installation of the Works.

 A **Variation** is an instruction given by the Engineer which varies the Works.

 The **Works** are what the Contract requires the Contractor to construct, install, and turn over to the Employer, as defined in the Contract Data.

**2. Interpretation**

 **2.1** In interpreting these Conditions of Contract, singular also means plural, male also means female or neuter, and the other way around. Headings have no significance. Words have their normal meaning under the language of the Contract unless specifically defined. The Engineer will provide instructions clarifying queries about the Conditions of Contract.

 **2.2** If sectional completion is specified in the Contract Data, references in the Conditions of Contract to the Works, the Completion Date, and the Intended Completion Date apply to any Section of the Works (other than references to the Completion Date and Intended Completion date for the whole of the Works).

 **2.3** The documents forming the Contract shall be interpreted in the following order of priority:

 (1) Contract Data & Schedule of rates

 (2) Special conditions

 (3) General conditions & Technical Specifications

 (4) LOI

 (5) Final bid of the Contractor

**3. Language and Law**

 **3.1** The language of the Contract will be ‘English’ and the law to be followed is as in India.

**4. Engineer's Decisions**

 **4.1** Except where otherwise specifically stated, the Engineer will decide contractual matters between the Employer and the Contractor in the role representing the Employer.

**5. Delegation**

 **5.1** The Engineer may delegate any of his duties and responsibilities to other Engineer except after notifying the Contractor and may cancel any delegation after notifying the Contractor.

**6. Communications**

 **6.1** Communications between parties which are referred to in the conditions are effective only when in writing or over E-Mail id as in Contract data. A communication or notice shall be effective only when it is delivered in address or E-Mail Id in Contract data . All communication should be in English language.

**7. Subcontracting**

 **7.1** The Contractor may subcontract part of work with the prior approval of the Engineer but should not ‘Assign’ the Contract without the approval of the Employer in writing. Subcontracting does not alter or modify the Contractor's obligations.

 **7.2** The whole of the works included in the contract shall be executed by the Contractor and the Contractor shall not directly or indirectly transfer, assign or sublet the contract or any part/share thereof or any interest therein without the prior written consent of the Employer and no undertaking shall relieve the Contractor from the full and entire responsibility of the contract or from active superintendence of the works during their progress.

**8. Other Contractors**

 **8.1** The Contractor shall cooperate and share the Site with other Contractors, public authorities, utilities, and the Employer.

**9. Personnel**

 **9.1** The Contractor shall employ the skilled personnel to carry out the functions stated in the Schedule or other personnel approved by the Engineer. The Engineer will approve any proposed replacement of key personnel only if their qualifications, abilities, and relevant experience are substantially equal to or better than those of the personnel listed in the said Schedule . The Contractor may have to submit CV of the personnel to Engineer for the said purpose.

 **9.2** If the Engineer asks the Contractor to remove a person who is a member of the Contractor’s staff or his work force stating the reasons the Contractor shall ensure that the person will leave the Site within seven days and shall have no further connection with the work in the Contract.

**10. Force Majure**

 **10.1** Standard Force majure condition is applicable in this contract

**11. Employer's Risks**

 **11.1** The Employer is responsible for the excepted risks which are (a) in so far as they directly affect the execution of the Works country, the risks of war act of foreign enemies, rebellion, revolution, insurrection or military or usurped power, civil war, riot and contamination from any nuclear fuel or nuclear waste or radioactive toxic explosive, or (b) a cause due solely to the design of the Works done by the Consultants factors which are all beyond the control of Employer.

**12. Contractor’s Risks**

 **12.1** All risks of loss of or damage to physical property and of personal injury and death which arise during and in consequence of the performance of the Contract other than the excepted risks during work which are the responsibility of the contractor.

 **12.2** The Contractor shall indemnify and keep indemnified the Employer, its directors, officers and employees from and against all claims, demands, actions, suits and proceedings, whatsoever that may be brought or made against the Employer by or on behalf of any person, body, authority whatsoever and whomsoever and all duties, penalties, levies, taxes, losses, damages, costs, charges and expenses and all other liabilities of whatsoever nature which the Employer may be liable to pay, incur or sustain by virtue of or as a result of performance or non-performance or observance or non-observance by the Contractor of any of the terms and conditions of this Agreement or due to misappropriation / damages / destruction / theft / loss of any of the properties of the Employer caused by the Contractor. Notwithstanding the above the Employer shall have full power and right at its discretion to pay or defend or compromise any such suits, claims or demands brought or made whether pending or threatened, as it may consider necessary or desirable and shall be entitled to recover from the Contractor all sums or money including all legal costs, charges and expenses incurred by virtue of any such compromise which shall not be called into question by the Contractor but shall be final and binding on the Contractor.

 **12.3** The Contractor shall conform to the provisions of any Act of the legislature relating to the works, and to the regulations and bye-laws of any authority, and of any water, electric supply and other companies and/or authorities with whose systems the structure is proposed to be connected, and shall, before making any variations from the Drawings or Specifications that may be necessitated by so regulations, give to the Engineer written notice, specifying the variation proposed to be made and the reason for making it and apply for instructions thereon. In case, the Contractor shall not within ten days of submission of such notice, receive such instructions, he shall proceed with the work conforming to the provisions, regulations, or bye-laws in question, and any variation. The Contractor shall bring to the attention of the Engineer all notices required by the said Acts, regulations or bye-laws to be given to any authority and pay to such authority, or to any public office all fees, cess, duties and taxes that may be properly chargeable in respect of the works, and lodge the receipts with the Engineer.

**13. Insurance**

 **13.1** The Contractor shall have ‘Contractors all risk’ insurance policy (CAR policy) in the joint names of The Employer and the Contractor, the name of the former being placed first in the policy covering the following:

 **13.1.1** The Works at the Contract Price together with the materials for incorporation in the Works at their replacement value.

 **13.1.2** All plants and equipment and other things brought to the site by the Contractor at their replacement value.

 **13.1.3** The insurance shall be against all losses or damages like materials or Human lives from whatever causes, other than excepted risks, for which the Contractor is responsible under the Contract. The insurance cover shall be for the period of the Contract and also for the Period of Maintenance, for loss or damage arising from a cause prior to commencement of the period of maintenance, and for any loss or damage, occasioned by the Contractor in the course of any operations carried out for the purpose of complying with his obligations.

 . **13.1.4** Such insurance shall be affected with an insurer and in terms approved by the Employer . The Contractor shall, as and when required, produce the policy or policies and the receipts for payment of the current premiums.

 **13.1.5** The Contractor should be responsible for preparation of all Claims from the commencement of the Works until the date the Works are completed (as set forth in the Completion Certificate) and handed over to the Employer. The Contractor shall be responsible for any damage or loss from any cause whatsoever to the Works or to materials delivered to the Site but not yet incorporated into the Works. The Employer’s taking of possession of the Works shall not in any way relieve the Contractor of his responsibilities during the period of the Contract including during the Guarantee period.

 **13.2** The Contractor shall produce evidence of insurance coverage for all above before submitting invoices for payment to the Employer.

 **13.3** If the Contractor has a blanket insurance policy for all his works and the policy covers all the items to be insured under this Contract, the Contractor may assign such policy/ policies in favor of The Employer, in lieu of taking out fresh policies in the joint names of the Contractor and The Employer.

 **13.4** **Third Party Insurance**

**13.4.1** Before commencing the execution of the Works, the Contractor shall insure against his liability for any material or physical damage, loss or injury which may occur to any property or life including that of The Employer or to any person, including any employee of The Employer, by or arising out of the execution of the Works or in the carrying out of the Contract. The Contractor shall indemnify The Employer against all claims which may be made on The Employer whether under Workman Compensation Act or Employees State Insurance Act or any other statute in force during the currency of the Contract or at common law in respect of any of the Employees of the Contractor or sub-contractor.

 **13.5** Such insurance shall be affected with an Insurer and in terms approved by The Employer and for at least the amount stated by the Engineer. The Contractor shall, whenever required, produce before the Employer/Engineer the policy or policies of insurance and the receipts of payment of the current premiums.

 **13.6 Workmen's Insurance**

The Employer shall not be liable for or in respect of any damages or compensation payable to any workman or other person in employment of the Contractor or any Subcontractor. The Contractor shall indemnify and keep indemnified the Employer against all such damages and compensation, other than those for which the Employer is liable as aforesaid, and against all claims, proceedings, damages, costs, charges, and expenses whatsoever in respect thereof or in relation thereto. The Contractor shall insure against such liability and shall continue such insurance during the whole of the time that any persons are employed by him on the Works provided that, in respect of any person employed by any subcontractor, the Contractor’s obligations to insure shall be satisfied if the Subcontractor shall have insured against the liability in respect of such persons in such manner that that Employer is indemnified under the policy, but the Contractor shall require such subcontractor to produce to the Employer, when required, such policy of insurance and the receipt for the payment of the current premium.

The Contractor shall also at all times indemnify the Employer against all claims, damages or compensation under all the applicable laws including the provisions of the Employees Provident Fund and Miscellaneous Provisions Act, 1952, Employees State Insurance Act, 1948, Child Labour (Prohibition & regulation) Act, 1986, Contract Labour (Regulation & Abolition) Act, 1970, Payment or Wages Act, 1936, Minimum Wages Act, 1948, Employer’s Liability Act, 1938, the Workmen’s Compensation Act, 1923, Industrial Disputes Act, 1947 and Maternity Benefit Act, 1961, or any rules made there under or any modification thereof from time to time.

The Employer shall not be liable for any payment in respect of any damages or compensation payable according to law in respect or in consequence of any accident or injury or loss of life to any workman or other person in the employment of the Contractor or any sub-contractor, except an accident or injury resulting from any act or default of The Employer, his agents or servants. The Contractor shall insure against such liability with an insurer or insurers approved by The Employer for sum of the established norms during the entire period till completion of Period of Maintenance.

 Without prejudice to the other rights of The Employer against the Contractor in respect of such default, The Employer shall be entitled to deduct from any sums payable to the Contractor the amount of any damages, compensation costs, charges and other expenses paid by The Employer and which are payable by the Contractor under this clause.

 **13.7** The Contractor, in case of re-building or reinstatement after fire, shall be entitled to such extension of time for completion as the Engineer may deem fit, but shall, however not be entitled to reimbursement by The Employer or any shortfall or deficiency in the amount finally paid by the insurer in settlement of any claim arising as set out herein.

 **13.8 Insurance by Sub-Contractor and Nominated Sub-Contractor**

Without prejudice to his liability under this clause the Contractor shall also cause all Nominated Sub-Contractor to effect, for their respective portions of the Works, similar policies of insurance in accordance with the provisions of this clause and shall produce or cause to produce to The Employer such policies. The Contractor shall not permit a Nominated Sub-Contractor to commence work at the site unless the said insurance policies are submitted. In the event of failure of the Nominated Sub-Contractor to take out such a policy of Insurance before commencing the works at the site, the Contractor shall be responsible for any claim or damage attributable to the said Nominated Sub-Contractor.

 **13.9 Period of Policies**

All the insurance covers mentioned above shall be kept alive during the complete period of the contract.

 **13.10 Remedy on Contractor's Failure to Insure**

If the Contractor shall fail to effect and keep in force the Insurances referred to above, or any other insurance which he may be required to effect under the terms of the Contract, then and in any such case The Employer on advice of the Engineer may effect and keep in force any such insurance and pay such premium or premiums as may be necessary for that purpose and from time to time deduct the amount so paid by The Employer as aforesaid from any moneys due or which may become due to the Contractor, or recover the same as debt due from the Contractor.

 **13.11** The aforesaid insurance policies shall provide that they shall not be cancelled till the Employer has agreed for cancellation. The Contractor shall prove to the Engineer from time to time that they have taken out all the insurance policies referred to above and has paid the necessary premiums for keeping the policies alive till expiry of the Defects Liability Period.

**14. Local Information**

 **14.1** The Contractor acknowledges that it has taken all information about the locality and the site and agrees with the existing situation completely and are fully aware about all local issues.

**15. Drawings**

 **15.1** Only one set / copy of drawings will be issued to the Contractor and the Contractor have to make any additional copy of their own.

 **15.2** Drawings will be issued progressively along with the execution. The Contractor shall give one month notice to Engineer of any further requirement of drawings for his execution.

 **15.3** The Contractor have to make all necessary shop drawings of their own and get it approved from the Engineer.

 **15.4** The Contractor must not deviate from the drawing during execution of the work . However the Contractor must keep a check of drawing with the BOQ. If there is a contradiction between drawings and BOQ they should immediately brought it to notice of the Engineer.

 **15.5** The Contractor shall bring to the notice of the Engineer any discripencies within drawings prior to preparation of Shop drawings or setout or execution.

 **15.6** All the drawings are property of the Employer and should not be copied or replicated without the permission of the Employer.

**16. Contractor to execute the Works**

 **16.1** The Contractor shall execute and install the Works in accordance with the Specification and Drawings and IS Codes.

 **16.2 The Project is ISO 9001 – 2008 certified and so the Contractor have to work and maintain documents in compliance to that.**

 **16.3 The Project is listed as Green Building and so the Contractor have to work in compliance to that.**

**17. The Works to Be Com­pleted by the Intended Completion Date**

 **17.1** The Contractor may commence execution of the Works on the Start Date and shall carry out the Works in accordance with the program submitted by the Contractor, as updated with the approval of the Engineer, and complete them strictly by the Intended Completion Date.

**18. Approval , Certification , Measurement etc.by the Engineer**

 **18.1** The Contractor shall submit specifications and drawings showing the proposed Temporary Works to the Engineer, who is to approve them if they comply with the Specifications and Drawings.

 **18.2** The Contractor shall be responsible for design of Temporary Works.

 **18.3** The Engineer's approval shall not alter the Contractor's responsibility for design of the Temporary Works.

 **18.4** The Contractor shall obtain approval of third parties to the design of the Temporary Works where required.

 **18.5** All Drawings prepared by the Contractor for the execution of the temporary Works, are subject to prior approval by the Engineer before their use.

**19. Safety**

 **19.1** The Contractor shall be responsible for the safety of all activities on the Site. The Employer will not be responsible for any situation which may affect the progress of work out of any accident. If the employer is forced to incur any expenditure due to such situation it will be adjusted **/**deducted from RA bill of the Contractor.

 **19.2** The Contractor shall take full responsibility for the safety, stability and adequacy of all site operations and methods of construction including all temporary works, provided that the Contractor shall not be responsible, except as may be expressly provided in the Contract, for the design or specification of the permanent works. The penalty for not adhering to the safety measures will be attracting a deduction of 0.05 % of Contract Price per week. The responsibility of any mishaps happening due to negligence or non-adherence to safety measures will be solely the responsibility of the contractor. The Employer as well as the Engineer will not be held responsible for it and the Contractor shall indemnify and keep indemnified at all times the Employer, its employees, agents, representatives, directors etc in this regard. The Contractor shall, throughout the execution and completion of the Works and the remedying of any defects therein:

1. Make all arrangements statutorily required or requested by the Engineer or otherwise and take all necessary precautions in order to ensure continuous safety of all persons and properties upon the Site and keep the Site (so far as the same is under his control) and the Works (so far as the same are not completed or occupied by the Employer) in an orderly state appropriate to the avoidance of danger to such persons and properties.
2. Provide and maintain at his own cost all lights, guards, fencing, warning signs and watching, protective gears for workmen or other things, when and where necessary or required by the Engineer or by any authority, for the protection of the Works or for the safety and convenience of the public or others on and off the Site, and
3. Take all reasonable steps to protect the environment on and off the Site and to avoid damage or nuisance to persons or to property of the public or others resulting from pollution, noise or other causes arising as a consequence of his methods of operation.
4. Report forthwith to the Engineer any evidence, which may indicate or is likely to lead to an abnormal or dangerous situation and shall take all necessary emergency control steps to avoid such abnormal situations; and

 In addition to any statutory obligations, the Contractor shall, as soon as practicable, report to the Engineer every occurrence on the Works or the Site causing damage to property or injury or death to persons. If required by the Engineer, the Contractor shall submit a report in writing to the Engineer within 48 hours of such requirement setting out full details of the occurrence. The Engineer shall have the right to make any enquiries either on the Site or elsewhere as to the cause and results of any such occurrence and the Contractor shall make available to the Engineer the necessary facilities for carrying out such enquiries.

 **19.3** The Contractor must take precautionary measures to protect the underground and other service lines viz. cables, water and sewer lines etc.

**20. Discoveries**

 **20.1** Anything of historical or other interest or of significant value unexpectedly discovered on the Site is the property of the Employer. The Contractor is to notify the Engineer of such discoveries and carry out the Engineer's instructions for dealing with them.

**21. Possession of the Site**

 **21.1** The Employer shall give possession of only required parts of the Project Site to the Contractor. Employer may withdraw the possession without any notice if situation so demands.

**22. Access to and Security the Site**

 **22.1** The Contractor shall allow the Engineer and any person authorized by the Engineer access to the Site, 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 / assembled for the works.

 **22.2** All operations necessary for the execution of the Works and for the construction of any Temporary Works shall so far as in compliance with the requirements of the Contract permits be carried on so as not to interfere unnecessarily or improperly with the public convenience or the access to use and occupation of public or private roads and footpaths or to or of properties whether in the possession of the Employer or of any other person and the Contractor shall save harmless and indemnify the Employer in respect of all claims, demands, proceedings, damages, costs, charges and expense whatsoever arising out of or in relation to any such matters in so far as the Contractor is responsible therefore.

 **22.3** During the progress of the works the Contractor shall keep the site reasonably free from all unnecessary obstruction and shall store or dispose of any constructional plant and surplus materials and clear away and remove from the site any wreckage, debris or temporary works which are no longer required and shall not store any combustible or inflammable goods in the site.

 **22.4** The Employer will only maintain security at the entry and exit point of the Project site. The Contractor have to maintain proper security of his own machineries , tools , tackles , inventories and workmen at their own arrangement.

 **22.5** The Contractor have to maintain securityof their inventories installed but not commissioned and handed over at their own arrangement.

**23. Instructions**

 **23.1** The Contractor shall carry out all instructions of the Engineer which comply with the applicable laws where the Site is located.

 **23.2** The Contractor shall permit the Employer to inspect the Contractor’s accounts and records relating to the performance of the Contractor and to have them audited by auditors appointed by the Employer, if so required by the Employer.

**24. Disputes**

 **24.1** If the Contractor believes that a decision taken by the Engineer was either outside the authority given to the Engineer by the Contract or that the decision was wrongly taken, the decision shall be referred to the ‘Employer’ both the parties should try to solve disputes through mutual dialogue. If not solved it will be referred to Arbitration, as per details in Special Conditions of the Contract.

**25. Procedure for Arbitration**

 **25.1** The arbitration shall be conducted in accordance with the arbitration procedure stated in the Special Conditions of Contract.

**26. Urgent Repairs**

If by reason of any accident or failure or other event occurring to in or in connection with the Works, or any part thereof, either during the execution of the Works or during the Period of Defect Liability/ Maintenance any remedial or other work or repair shall, in the opinion of the Engineer or Engineer’s representative be urgently necessary for security and safety of life or for the works or of adjoining property, and the Contractor is unable or unwilling at once to do such work or repair, the Employer may employ his own or other workmen do such work or re-pair, as the Engineer or the Engineer’s representative may consider necessary. If the work or repair so done by the Employer which is in the opinion of the Engineer, the Contractor was liable to do at his own expense under the Contract, all costs and charges incurred by the Employer in so doing shall on demand be paid by the Contractor to the Employer or may be deducted by the Employer from any monies due or which may become due to the Contractor. Provided always that the Engineer or the Engineer’s representative (as the case may be) shall, as soon after the occurrence of any such emergency, as may be reasonably practicable notify, the Contractor thereof in writing.

**II. Time Control**

**27. Programme.**

 **27.1** Within the time stated in the Contract Data the Contractor shall submit to the Engineer for approval a Program showing the general methods, arrangements, order, and timing for all the activities in the Works along with monthly cash flow forecast.

 **27.2** An update of the Program shall be a program showing the actual progress achieved on each activity and the effect of the progress achieved on the timing of the remaining work including any changes to the sequence of the activities.

 **27.3** The Contractor shall submit to the Engineer, for approval, an updated Program. If the Contractor does not submit an updated Program within the period specified above, the Engineer may withhold 1% of the next payment certificate and continue to withhold this amount until the overdue Program has been submitted

 **27.4** The Engineer's approval of the Program shall not alter the Contractor's obligations. The Contractor may revise the Program and submit it to the Engineer again at any time. A revised Program is to show the effect of Variations and Compensation Events.

**28. Extension of the Intended Completion Date**

 **28.1** The Engineer shall extend the Intended Completion Date if a Compensation Event occurs or a Variation is issued which makes it impossible for Completion to be achieved by the Intended Completion Date without the Contractor taking steps to accelerate the remaining work and which would cause the Contractor to incur additional cost.

 **28.2** The Engineer shall decide whether and by how much to extend the Intended Completion Date within 21 days of the Contractor asking the Engineer for a decision upon the effect of a Compensation Event or Variation and submitting full supporting information. If the Contractor has failed to give early warning of a delay or has failed to cooperate in dealing with a delay, the delay by this failure shall not be considered in assessing the new Intended Completion Date. The extension of time shall never lead to any price escalation.

**29. Work done by alternate agency**

If the contractor fails to comply with the Milestones, the Employer shall have liberty to execute the job , part or whole of the balance job by other alternative agency, without terminating the contract, at the risk and cost of the contractor. Employer will have to serve a notice of 15 days for the same.

**30. Delays Ordered by the Engineer**

 **30.1** The Engineer may instruct the Contractor to delay the start or progress of any activity within the Works.

**31. Reports & Management Meetings**

 **31.1** The Contractor shall record daily categorywise labour turn , materials consumed and progress of work.

 **31.2** The Contractor shall submit to the Engineer a weekly progress report. The Contractor shall also submit a monthly report showing the progress of the month with respect to plan and plan for the next month.

 **31.3** The Contractor may have to submit any further report as per instruction of Engineer.

 **31.1** The Contractor may require the other to attend a management meeting. The business of a management meeting shall be to review the plans for remaining work and to deal with matters raised in accordance with the early warning procedure.

 **31.2** The Engineer shall record the business of management meetings and is to provide copies of his record to those attending the meeting and to the Employer. The responsibility of the parties for actions to be taken is to be decided by the Engineer either at the management meeting or after the management meeting and stated in writing to all who attended the meeting.

**32. Early Warning**

 **32.1** The Contractor is to warn the Engineer at the earliest opportunity of specific likely future events or circumstances that may adversely affect the quality of the work, increase the Contract Price or delay the execution of works**.** The Engineer may require the Contractor to provide an estimate of the expected effect of the future event or circumstance on the Contract Price and Completion Date. The estimate is to be provided by the Contractor as soon as reasonably possible.

 **32.2** The Contractor shall co-operate with the Engineer in making and considering proposals for how the effect of such an event or circumstance can be avoided or reduced by anyone involved in the work and in carrying out any resulting instruction of the Engine

**III. Quality Control**

**33. Identifying Defects**

 **33.1** The Engineer shall check the Contractor's work and notify the Contractor of any Defects that are found. Such checking shall not affect the Contractor's responsibilities. The Engineer may instruct the Contractor to search for a Defect and to uncover and test any work that the Engineer considers may have a Defect

 **33.2** The Engineer shall, during the progress of the works, have power to order in writing from time to time the removal from the works within such reasonable time or times as may be specified in the order, of any materials which in the opinion of the Engineer are not in accordance with the Specifications or the instructions of the Engineer, the substitution of proper materials, and the removal and proper re- execution of any work executed with materials or workmanship not in accordance with the Drawings and Specifications or instructions, and the Contractor shall forthwith carry out such order at his own cost. In case of default on the part of the Contractor to carry out such order, the Employer shall have the power to employ and pay other persons to carry out the same, and all expenses consequent thereon, or incidental thereto, as certified by the Engineer shall be borne by the Contractor, or may be deducted by the Employer from any monies due, or that may become due, to the Contractor.

 **33.3** If the Contractor after receipt of written notice from the Engineer requiring compliance within ten days fails to comply with such further drawings and/or Engineer’s instructions the Employer may employ and pay other persons to execute any such work whatsoever that may be necessary to give effect thereto, and all costs incurred in connection therewith shall be recoverable from the Contractor by the Employer on the Certificate of the Engineer as a debt or may be deducted by him from any moneys due to the Contractor.

 **33.4** The Engineer shall be entitled during manufacture to inspect, examine and test on the Contractor’s premises during working hours the materials and workmanship and check the progress of manufacture of all fabrication materials to be supplied under the Contract, and if part of the said materials is being manufactured on other premises the Contractor shall obtain for the Engineer permission to inspect, examine and test as if the said Plant were being manufactured on the Contractors premises. Such inspection, examination or testing if made shall not relieve the Contractor from any obligation under the Contract.

 **33.5** The Contractor shall agree with the Engineer the date on and the place at which any plant/works will be ready for testing as provided in the Contract and unless the Engineer shall attend at the place so named on the date agreed the Contractor may proceed with the tests, which shall be deemed to have been made in the Engineer’s presence, and shall forthwith forward to the Engineer duly certified copies of the test readings. The Engineer shall give the Contractor 24 hours notice in writing of his intention to attend the tests.

 **33.6** Where the Contract provides for tests on the premises of the Contractor or of any sub-contractor the Contractor shall provide such assistance, labor, materials, electricity, fuel, stores, apparatus and instruments as may be requisite and as may be reasonably demanded to carry out such tests efficiently.

 **33.7** As and when fabrication materials shall pass the tests referred in this, the Engineer shall furnish to the Contractor a certificate in writing to that effect.

 **33.8** If as a result of such inspection, examination or test of the works the Engineer shall decide that such material is defective or not in accordance with the Contract he shall notify the Contractor accordingly stating in writing his objection and reasons therefore. The Contractor shall with all speed make good the defect or ensures that the material complies with the Contract at their own risk and cost. Thereafter, if required by the Engineer/Engineer, the tests shall be repeated under the same terms and conditions save that all reasonable expenses to which the Employer may be put by the repetition of the tests shall be deducted from the Contract Price.

 **33.9** Unless the Engineer shall otherwise direct, no material shall be delivered to site until the Engineer shall have issued, in respect of such material, a certificate above. Likewise Fabrication Materials or Contractor’s Equipment shall be delivered to Site only upon an authorization in writing applied for and obtained by the Contractor from the Engineer.

 **33.10** The Contractor shall be responsible for the reception on site of all Materials and Contractor’s Equipment delivered for the purposes of the Contract.

 **33.11** All deficiencies revealed by testing and inspection shall be rectified by the Contractor at his own expense and to the satisfaction and approval of the Engineer. Rectified components shall be subject to retesting and re-inspection.

 **33.12** The Contractor shall provide the Engineer with five copies of reports of all inspections and tests.

 **33.13** No work shall be covered up or put out of view without the approval of the Engineer and the Contractor shall afford full opportunity for the Engineer to examine and measure any work, which is about to be covered up or put out of view. The Contractor shall give due notice to the Engineer of any such work to be ready for examination and the Engineer shall without unreasonable delay, unless he considers it necessary and advises the Contractor accordingly, attend for the purpose of examining and measuring such work.

 **33.14** The Contractor shall uncover any part or parts of the Works as the Engineer may from time to time direct and shall reinstate and make good such part or parts to the satisfaction of the Engineer. If any such part or parts have been covered up or put out of view after compliance with the requirements of sub-clause (i) of this Clause and are found to be executed in accordance with the contract the expenses of uncovering, reinstating and making good the same shall be borne by the Employer but in any other case all such expenses shall be borne by the Contractor and shall be recoverable from him by the Employer or may be deducted by the Employer from any monies due or which may become due to the Contractor.

 **33.15** All materials and workmanship shall be the best of the respective kinds as described in the Bill of Quantities / List of Approved Makes or shall be in accordance with the Employer / Engineer’s instructions and shall be subjected from time to time to such tests as the Employer / Engineer may direct. The Contractor shall upon the instruction of the Engineer furnish him with documentation to prove that the materials & goods comply with the requirements of contract and for requirement stated above. The Engineer may issue instruction in regard to removal of material from site or any work, if these are not in accordance with the Contract. The Contractor shall provide such assistance instruments, machinery, labor and materials as are normally required for examining, measuring, sampling and testing any material or part of work before incorporation in the Works for testing as may be selected and required by the Engineer/Engineer’s Representative.

 **33.16** All samples of adequate numbers, sizes, shades & pattern as per specification shall be supplied by the Contractor without any extra charge. Apart from adhering to any special provision made in the specifications regarding submission of samples, the contractor shall within 10 days of approval of shop drawings, provide to the Engineer samples along with the detailed literature of all materials he proposes to use in the Civil and interior works irrespective of the fact that a specific make / material might have been stipulated. If certain items, proposed to be used, are of such nature that samples cannot be presented or prepared at the site, detailed literature/test certificate of the same shall be provided instead to the satisfaction of the Engineer. Before submitting the samples/literature the contractor shall satisfy himself that the material / equipment for which he is submitting the samples/literature meet with the requirement of the specification. The Engineer shall check the samples and give his comments and / or approval to the same. Only when the Engineer approves the samples in writing, the contractor shall proceed with the procurement and installation of the particular material/equipment. The approved samples shall be signed by the Engineer for identification and shall be kept on record at site office until the completion and acceptance of the work and shall be available at the site for inspection/comparison at any time. The contractor shall keep with him a duplicate of such samples to enable him to process the matter.

 **33.17** For items of work where the samples are to be made at the site, the same procedure shall be followed. All such samples shall be prepared at a place where it can be left undisturbed until the completion of the project.

 **33.18** The Engineer shall communicate his comments / approval to the Contractor to the samples at his earliest convenience. Any delay that might occur in approving of the samples for reasons of its not meeting with the specifications or other discrepancies, inadequacy in furnishing samples of best qualities from various manufacturers and such other aspects causing delay on the approval of the materials/equipments, etc. shall be to the account of the contractor. In this respect the decision of the Engineer shall be final.

 **33.19** On or before delivery of the supplies of materials/equipment for permanent works at the site, the contractor shall specifically arrange to get the supply inspected by the Engineer if necessary at his / manufacturer’s workshop/s and compared with the approved sample and his specific approval obtained before using the same in the work.

 **33.20** The cost of making any test shall be borne by the Contractor if such test is intended by or provided for in the Specification or Bill of Quantities.

 **33.21** If any test is ordered by the Engineer which is either

(a) Not so intended by or provided for; or

(b) (In the cases above mentioned) is not so particularized, or

(c) Though so intended or provided for but ordered by the Engineer to be carried out by an independent person at any place other than the Site or the place of manufacture of fabrication of the materials tested or any Government/ approved Laboratory,

then the cost of such test shall be borne by the Contractor, if the test shows the workmanship or materials not to be in accordance to the provision of the Contract or the Engineer’s instructions.

 **34. Materials & Testing**

 **34.1** All materials shall be of respective kinds described in the Technical Specification . The brand of materials should be as given in the list of approved brand. If the Contractor want to procure a brand which is not in the list of approved make they have to submit sample , technical specification , Test certificates etc. to Engineer for approval. The Engineer have the prerogative to accept or decline.

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

 **34.2** The Contractor shall, if required by the Engineer in writing, search, test as shall be necessary to determine the cause of any defect, imperfection or fault under the directions of the Engineer. Unless such defect, imperfection or fault shall be one for which the Contractor is liable under the contract the cost of the work carried out by the Contractor in searching as aforesaid shall be borne by the Employer. But if such defect, imperfection or fault shall be one for which the Contractor is liable as aforesaid, the cost of the work carried out in searching as aforesaid shall be borne by the Contractor and he shall in such case repair rectify and make good such defect, imperfection or fault at his own expense.

**35. Correction of Defects**

 **35.1** The Engineer shall give notice to the Contractor of any Defects before the end of the Defects Liability Period, which begins at Completion and is defined in the Contract Data. The Defects Liability Period shall be extended for as long as Defects remain to be corrected.

 **35.2** Every time notice of a Defect is given, the Contractor shall correct the notified Defect within the length of time specified by the Engineer’s notice.

**36. Penalty for defects**

 **36.1** If the Contractor executes a work with minor defect and the Employer is compelled to accept that, considering the progress of work or hazard of redoing, Employer**~~s~~** can impose penalty @ 20 % of the value of the defective work on immediate next running bill of Contractor, after serving notice to the Contrac**tor**.

**IV. Cost Control**

**37. Bill of Quantities and Billing**

 **37.1** The Bill of Quantities in the schedule of rates shall contain items for the execution, installation, testing, and commissioning work to be done by the Contractor.

 **37.2** The quantities in the Bill of Quantities is indicative and used to calculate the Contract Price. The Employer may add or reduce the quantity .The Contractor will be paid for the quantity of the actual work done at the rate in the Bill of Quantities for each item.

 **37.3** The Bill of Quantities (BOQ), unless otherwise stated shall be deemed to have been prepared in accordance with the Indian Standard Method of Measurement and quantities in BOQ are to be considered as estimated and not accurate.

 **37.4** The Engineer may from time to time intimate to the Contractor that he requires the works to be measured, and the Contractor shall forthwith attend or send a qualified Representative to assist the Engineer in taking such measurements and calculations and to furnish all particulars or to give all assistance required by any of them. Should the Contractor not attend or neglect or omit to send such Representative, then the measurement taken by the Engineer or a person approved by him shall be taken to be correct measurements of the works. Such measurements shall be taken in accordance with the Mode of Measurements detailed in the Specifications.

 **37.5** If the specifications do not contain particulars of materials and works which are obviously necessary for the proper completion of the works, and the intention to include, which is inferred, all such materials and works shall be supplied and executed by the Contractor without extra charge. If the contractor requires additional information, request in writing well in advance before commencement of the particular work to the Engineer who will issue such detailed information as necessary within a reasonable time.

 **37.6** The rates in the priced Bill of Quantity in considered to be complete rate including material cost, labour cost, overhead, profits, statutory costs (Insurance, PF, ESI etc.), incidental expenses, taxes, transportation, rent, Levy, **Cess,** Octroi, Tollages, Royalty, etc. **except Service tax**

**38. Addition , alteration & Omission**

 **38.1** The Employer have the prerogative to make variation in quantities in any item in BOQ or may omit the item from work without showing any reason to the Contractor.

 **38.2** If the final quantity of the work done differs from the quantity in the Bill of Quantities for the particular item by more than 25 percent ( +/- ), the Engineer shall analyze the rate to allow for the change, if any.

 **38.3** The Engineer shall not adjust any other terms & conditions due to change in quantity.

 **38.4** If requested by the Engineer, the Contractor shall provide the Engineer with a detailed cost breakdown of any rate in the Bill of Quantities.

**39. Variations**

 **39.1** The Contractor shall carry out all the works strictly in accordance with Drawings, detailed Specifications, and instructions of the Engineer. If in the opinion of the Employer/ Engineer changes have to be made in the works the Contractor shall carry out the same, and payment, if any, arising out of these shall be made as per the terms of the contract. The rate for such items will be decided through reference of any Government Schedule or by rate analysis from analysis from market rates. The Engineer may ask the contractor to supply rate analysis with supporting documents.

 **39.2** If the specifications do not contain particulars of materials and works which are obviously necessary for the proper completion of the works, and the intention to include, which is inferred, all such materials and works shall be supplied and executed by the Contractor without extra charge. If the contractor requires additional information, request in writing well in advance to commencement of the particular work to the Engineer who will issue such detailed information as necessary within a reasonable time

**40. Payments for Variations**

 **40.1** The Contractor shall provide the Engineer with a quotation for carrying out the Variation when requested to do so by the Engineer. The Engineer shall assess the quotation, which shall be given within seven days of the request or within any longer period stated by the Engineer and before the Variation is ordered.

 **40.2** If the work in the Variation corresponds with an item description in the Bill of Quantities and if, in the opinion of the Engineer, the quantity of work above the limit stated in Sub Clause 38.1 or the timing of its execution do not cause the cost per unit of quantity to change, the rate in the Bill of Quantities shall be used to calculate the value of the Variation. If the cost per unit of quantity changes, or if the nature or timing of the work in the Variation does not correspond with items in the Bill of Quantities, the quotation by the Contractor shall be in the form of new rates for the relevant items of work.

 **40.3** If the Contractor's quotation is unreasonable, the Engineer may order the Variation and make a change to the Contract Price which shall be based on Engineer’s own forecast of the effects of the Variation on the Contractor's costs.

 **40.4** If the Engineer decides that the urgency of varying the work would prevent a quotation being given and considered without delaying the work, no quotation shall be given and the Variation shall be treated as a Compensation Event.

 **40.5** The Contractor should notify the Employer of any additional Compensation , Reimbursement etc. that he is expecting within 30 days from the date of the event and or work for which it has arisen. The Employer may not entertain any such claim if not notified accordingly. Further the Contractor shall not be entitled to any additional payment for costs which could have been avoided by giving early warning.

**41. Cash flow forecasts**

 **41.1** When the Program is updated, the contractor is to provide the Engineer with an updated cash flow forecast.

**42. Payment Certificates**

 **42.1** The Contractor shall submit to the Engineer monthly statements of the estimated value of the work completed less the cumulative amount certified previously.

 **42.2** The Engineer shall check the Contractor's monthly statement certify the amount to be paid to the Contractor after taking into account any credit or debit for the month in question in respect of materials for the works in the relevant amounts and under conditions set forth in the Contract Data.

 **42.3** The value of work executed shall be determined by the Engineer.

 **42.4** The value of work executed shall comprise the value of the quantities of the items in the Bill of Quantities completed.

 **42.5** The value of work executed shall include the valuation of Variations and Compensation Events.

 **42.6** The Engineer may exclude any item certified in a previous certificate or reduce the proportion of any item previously certified in any certificate in the light of later information.

 **42.7** The Contractor has to submit a ‘No due certificate’ particularly from the local suppliers along with all bills & specially **with** the Final bill.

 **42.8** All bills to be well supported by all uptodate statutory compliance documents viz. S-Tax Challan , PF , ESI , P-Tax , Labour wage register, Muster Roll, OT Register, Accident Register, Bonus Register etc. but not limited to the said.

 **42.9** The final bill to be additionally supported by ‘No due’ certificate from Statutory departments , Sub Contractors and local Vendors. If the Employer is forced to pay any amount by the Sub Contractors and or local Vendors due to non payment by the Employer , the same will be adjusted from bill of retention money of Contractor after serving a notice.

**43. Payments**

 **43.1** Payments shall be adjusted for deductions for advance payments, retention and other recoveries in terms of the contract and deduction at source of taxes as applicable under the law. The Employer shall pay the Contractor the amounts certified by the Engineer within 15 days of the date of each certificate.

 **43.2** Items of the Works for which no rate or price has been entered in will not be paid for by the Employer and shall be deemed covered by other rates and prices in the Contract.

**44 Submission of bill**

All bills to be submitted in triplicate signed by authorized person of the Contractor along with all statutory documents as per clause No. 42.8

**45. Tax**

**45.1** The rates quoted by the Contractor shall be deemed to be inclusive of all the taxes (excluding service tax) that the Contractor will have to pay for the performance of this Contract. The Employer will perform such duties in regard to the deduction of such taxes at source as per applicable law. Service tax will be paid extra as per law.

**46. Payment mode**

**46.1** All payments shall be made in A/C payee Cheque or through NEFT / RTGS. The Contractor have to give valid Money Receipt for each payment.

**47. Price adjustment**

All rates are fixed and firm till the completion of the Project or successful Handover.

**48. Retention**

 **48.1** The Employer shall retain from each payment due to the Contractor the proportion stated in the Contract Data until Completion of the whole of the Works.

 **48.2** The retention money will be released when the Defects Liability Period has passed and the Engineer has certified that all Defects notified by the Engineer to the Contractor before the end of this period have been corrected.

 **48.3** On completion of the whole works, the contractor may substitute retention money with an “on demand” Bank guarantee.

**49. Liquidated Damages**

 **49.1** The Contractor shall pay liquidated damages to the Employer at the rate per month stated in the Special conditions of contract for each month that the Completion Date is later than the Intended Completion Date (for the whole of the works or the milestone ). The total amount of liquidated damages shall not exceed the amount defined in the Special conditions of contract. The Employer may deduct liquidated damages from payments due to the Contractor. Payment of liquidated damages does not affect the Contractor's liabilities.

 **49.2** If the Intended Completion Date is extended after liquidated damages have been paid, the Engineer shall correct any overpayment of liquidated damages by the Contractor by adjusting the next payment certificate. However the Contractor shall not be paid any interest on the over payment calculated .

**50. Bonus & Penalty**

Bonus & Penalty should be as per the Special Conditions of Contract.

**51. Advance Payment**

**51.1** Mobilization advance may be given by Employer against 100% Bank Guarantee as per details in Contract data. The same to be adjusted @ 10% of bill value from each RA bill.

**51.2**  Secured advance can be given against inventories procured at site as per details in Contract data. The same to be adjusted when the item of work is entered in the RA bill.

**52. Signing amount**

**52.1** The Employer may pay a token amount ( maximum of Rs. 1 Lakh ) as agreement signing amount to the Contractor . The same amount to be treated as part of mobilization advance and adjusted from RA bill.

**53. Royalties and patent right**

All royalties or other sums payable in respect of the supply and use in carrying out the work as desired by or referred to the schedule of quantities of any natural resource or patented items, process or invention shall be deemed to have been included the Contract sum and contractor shall indemnify the Employer from and against all crimes, proceedings, damages, costs and expenses which may be put by reason the contractor infringing or being held to have infringed ant patent sights in relation to any such articles, process and inventions.

**54. Cost of Repairs**

**54.1** Loss or damage to the Works or Materials to be incorporated in the Works between the Start Date and the end of the Defects Completion Period shall be remedied by the Contractor at the Contractor's cost if the loss or damage arises from the Contractor's acts or omissions.

**V. Finishing the Contract**

**55. Completion**

 **55.1** The Contractor shall request the Engineer to issue a Certificate of Completion of the Works and the Engineer will do so upon deciding that the Work is completed.

 **55.2** On the completion of the Works the Contractor shall clear away and remove from the site all constructional plant, surplus materials, debris and temporary works of every kind and leave the whole of the site and works clean and in a workmanlike condition to the full satisfaction of the Engineer/ Local authorities not later than 30 days from the virtual completion of the works or by such other later date as fixed by the Engineer. If the Employer is forced to incur cost to clear the site the same will be adjusted from final bill or retention money of the Contractor.

**56. Taking Over**

 **56.1** The Employer shall take over the Site and the Works within seven days of the Engineer issuing a certificate of Completion. The Contractor have to ensure security of all completed work and inventories till that taking over.

 **56.2** Occupation in part

If the Employer wants to occupy areas in part, the contractor shall complete the work of these area in conjunction with the employer and handover the same to the Employer without affecting any of the clauses of the Contract. The defect liability period for such parts starts from date of such occupation.

**57. Final Account**

 **57.1** The Contractor shall supply to the Engineer a detailed account of the total amount that the Contractor considers payable under the Contract before the end of the Defects Liability Period. The Engineer shall issue a Defect Liability Certificate and certify any final payment that is due to the Contractor within 60 days of receiving the Contractor's account if it is correct and complete along with all necessary documents. If it is not, the Engineer shall issue within 30 days a schedule that states the scope of the corrections or additions that are necessary. If the Final Account is still unsatisfactory after it has been resubmitted, the Engineer shall decide on the amount payable to the Contractor and issue a payment certificate, within 60 days of receiving the Contractor’s revised account.

**58. As build drawings & Operating and Maintenance Manuals**

 **58.1** The Contractor have to submit “As built” Drawings and operating and maintenance manuals to the Employer before submission of Final bill.

 **58.2** If the Contractor does not supply the Drawings and/or manuals or they do not receive the Engineer’s approval, the Engineer shall withhold additional 5 % of the final work value of the Contractor.

**59. Termination**

 **59.1** The Employer or the Contractor may terminate the Contract if the other party causes a fundamental breach of the Contract.

 **59.2** Fundamental breaches of Contract include, but shall not be limited to the following:

 (a) the Contractor stops work for 15 days when no stoppage of work is shown on the current Program and the stoppage has not been authorized by the Engineer;

 (b) the Employer instructs the Contractor to delay the progress of the Works for reasons not beyond the control of the Employer and the instruction is not withdrawn within 60 days;

 (c) the Employer or the Contractor is made bankrupt or goes into liquidation other than for a reconstruction or amalgamation;

 (d) a payment certified by the Engineer is not paid by the Employer to the Contractor within 60 days of the date of the Engineer's certificate;

 (e) the Engineer gives Notice that failure to correct a particular Defect is a fundamental breach of Contract and the Contractor fails to correct it within a reasonable period of time determined by the Engineer;

 (f) the Contractor does not maintain a security money which is required;

 (g) the Contractor has delayed the completion of works by the number of days for which the maximum amount of liquidated damages can be paid as defined in the Contract data; and

 (h) if the Contractor, in the judgment of the Employer has engaged in corrupt or fraudulent practices in competing for or in the executing the Contract or their members indulge in some antisocial activities including keeping arms in Project site or labour camp etc.

 **59.3** When either party to the Contract gives notice of a breach of contract to the Engineer for a cause other than those listed under Sub Clause 59.2 above, the Engineer shall decide whether the breach is fundamental or not.

 **59.4** Notwithstanding the above, the Employer may terminate the Contract for convenience.

 **59.5** If the Contract is terminated the Contractor shall stop work immediately, make the Site safe and secure and leave the Site as soon as reasonably possible.

**60. Payment upon Termination**

 **60.1** If the Contract is terminated because of a fundamental breach of Contract by the Contractor, the Engineer shall issue a certificate for the value of the work done less advance payments received up to the date of the issue of the certificate, less other recoveries due in terms of the contract, less taxes due to be deducted at source as per applicable law and less the percentage to apply to the work not completed as indicated in the Contract Data. Additional Liquidated Damages shall not apply. If the total amount due to the Employer exceeds any payment due to the Contractor the difference shall be a debt payable to the Employer.

 **60.2** If the Contract is terminated at the Employer's convenience or because of a fundamental breach of Contract by the Employer, the Engineer shall issue a certificate for the value of the work done, the reasonable cost of removal of Equipment, repatriation of the Contractor's personnel employed solely on the Works, and the Contractor's costs of protecting and securing the Works and less advance payments received up to the date of the certificate, less other recoveries due in terms of the contract and less taxes due to be deducted at source as per applicable law.

**61. Property**

 **61.1** All materials on the Site, Plant, Equipment, Temporary Works and Works are deemed to be the property of the Employer, if the Contract is terminated because of a Contractor’s default.

**62. Release from Performance**

 **62.1** If the Contract is frustrated by the outbreak of War , Riot, Natural Calamity or by any other event entirely outside the control of either the Employer or the Contractor the Engineer shall certify that the Contract has been frustrated. The Contractor shall make the Site safe and stop work as quickly as possible after receiving this certificate and shall be paid for all work carried out before receiving it and for any work carried out afterwards to which commitment was made.

**63. Suspension of Loan or Credit from funding bodies**

 **63.1** In the event that the Funding bodies / Bank suspends the Loan or Credit to the Employer, from which part of the payments to the Contractor are being made:

 (a) The Employer is obligated to notify the Contractor of such suspension within 7 days of having received the Funding bodies’ suspension notice.

 (b) If the Contractor has not received sums due to it upon the expiration of the 28 days for payment provided for in Sub-Clause 43.1, the Contractor may immediately issue a 14-day termination notice.

VI. **LABOUR :**

**64. Labour**

 The Contractor shall, unless otherwise provided in the Contract, make his own arrangements for the engagement of all staff and labour, local or other, and for their payment, housing, feeding and transport, sanitation, Medical, safety etc . Local labour shall be preferably engaged for unskilled work. Preference may also be given for appointment of local people in semi skilled and skilled categories , if such suitable persons are available.

 The Contractor shall, if required by the Engineer, deliver to the Engineer a return in detail, in such form and at such intervals as the Engineer may prescribe, showing the staff and the numbers of the several classes of labour from time to time employed by the Contractor on the Site and such information respecting Contractor’s Equipment as the Engineer may require.

**65. Compliance with labour regulations :**

 During continuance of the contract, the Contractor and his sub contractors shall abide at all times by all existing labour enactments and rules made thereunder, regulations, notifications and bye laws of the State or Central Government or local authority and any other labour law (including rules), regulations, bye laws that may be passed or notification that may be issued under any labour law in future either by the State or the Central Government or the local authority from time to time. Salient features of some of the major labour laws that are applicable to construction industry are given below. The Contractor shall keep the Employer indemnified in case any action is taken against the Employer by the competent authority on account of contravention of any of the provisions of any Act or rules made thereunder, regulations or notifications including amendments. If the Employer is caused to pay or reimburse, such amounts as may be necessary to cause or observe, or for non-observance of the provisions stipulated in the notifications/bye laws/Acts/Rules/regulations including amendments, if any, on the part of the Contractor, the Engineer/Employer shall have the right to deduct any money due to the Contractor including his amount of performance security. The Employer/Engineer shall also have right to recover from the Contractor any sum required or estimated to be required for making good the loss or damage suffered by the Employer.

 The employees of the Contractor and the Sub-Contractor in no case shall be treated as the employees of the Employer at any point of time.

**SALIENT FEATURES OF SOME MAJOR LABOUR LAWS APPLICABLE TO ESTABLISHMENTS ENGAGED IN BUILDING AND OTHER CONSTRUCTION WORK.**

 a) Workmen Compensation Act 1923 :- The Act provides for compensation in case of injury by accident arising out of and during the course of employment.

 b) Payment of Gratuity Act 1972 :- Gratuity is payable to an employee under the Act on satisfaction of certain conditions on separation if an employee has completed 5 years service or more or on death the rate of 15 days wages for every completed year of service. The Act is applicable to all establishments employing 10 or more employees

 c) Employees P.F. and Miscellaneous Provision Act 1952 : The Act Provides for monthly contributions by the employer plus workers @ 10% or 8.33%. The benefits payable under the Act are:

 (i) Pension or family pension on retirement or death, as the case may be.

 (ii) Deposit linked insurance on the death in harness of the worker.

 (iii) Payment of P.F. accumulation on retirement/death etc.

 d) Maternity Benefit Act 1951 :- The Act provides for leave and some other benefits to women employees in case of confinement or miscarriage etc.

 e) Contract Labour (Regulation & Abolition) Act 1970:- The Act provides for certain welfare measures to be provided by the Contractor to contract labour and in case the Contractor fails to provide, the same are required to be provided, by the Principal Employer by Law. The Principal Employer is required to take Certificate of Registration and the Contractor is required to take license from the designated Officer. The Act is applicable to the establishments or Contractor of Principal Employer if they employ 20 or more contract labour.

 f) Minimum Wages Act 1948 :- The Employer is supposed to pay not less than the Minimum Wages fixed by appropriate Government as per provisions of the Act if the employment is a scheduled employment. Construction of Buildings, Roads and Runways are scheduled employments.

 g) Payment of Wages Act 1936 :- It lays down as to by what date the wages are to be paid, when it will be paid and what deductions can be made from the wages of the workers.

 h) Equal Remuneration Act 1979 :- The Act provides for payment of equal wages for work of equal nature to Male and Female workers and for not making discrimination against Female employees in the matters of transfers, training and promotions etc.

 i) Payment of Bonus Act 1965 :- The Act is applicable to all establishments employing 20 or more employees. The Act provides for payments of annual bonus subject to a minimum of 8.33% of wages and maximum of 20% of wages to employees drawing Rs.3500/-per month or less. The bonus to be paid to employees getting Rs.2500/- per month or above upto Rs.3500/- per month shall be worked out by taking wages as Rs.2500/-per month only. The Act does not apply to certain establishments. The newly set-up establishments are exempted for five years in certain circumstances. Some of the State Governments have reduced the employment size from 20 to 10 for the purpose of applicability of this Act.

 j) Industrial Disputes Act 1947 :- The Act lays down the machinery and procedure for resolution of Industrial disputes, in what situations a strike or lock-out becomes illegal and what are the requirements for laying off or retrenching the employees or closing down the establishment.

 k) Industrial Employment (Standing Orders) Act 1946 :- It is applicable to all establishments employing 100 or more workmen (employment size reduced by some of the States and Central Government to 50). The Act provides for laying down rules governing the conditions of employment by the Employer on matters provided in the Act and gets the same certified by the designated Authority.

 l) Trade Unions Act 1926 :- The Act lays down the procedure for registration of trade unions of workmen and employers. The Trade Unions registered under the Act have been given certain immunities from civil and criminal liabilities.

 m) Child Labour (Prohibition & Regulation) Act 1986 :- The Act prohibits employment of children below 14 years of age in certain occupations and processes and provides for regulation of employment of children in all other occupations and processes. Employment of Child Labour is prohibited in Building and Construction Industry.

 n) Inter-State Migrant workmen’s (Regulation of Employment & Conditions of Service) Act 1979 :- The Act is applicable to an establishment which employs 5 or more inter-state migrant workmen through an intermediary (who has recruited workmen in one state for employment in the establishment situated in another state). The Inter-State migrant workmen, in an establishment to which this Act becomes applicable, are required to be provided certain facilities such as housing, medical aid, travelling expenses from home upto the establishment and back, etc.

 o) The Building and Other Construction workers (Regulation of Employment and Conditions of Service) Act 1996 and the Cess Act of 1996 :- All the establishments who carry on any building or other construction work and employs 10 or more workers are covered under this Act. All such establishments are required to pay cess at the rate not exceeding 2% of the cost of construction as may be modified by the Government. The Employer of the establishment is required to provide safety measures at the Building or construction work and other welfare measures, such as Canteens, First-Aid facilities, Ambulance, Housing accommodations for workers near the work place etc. The Employer to whom the Act applies has to obtain a registration certificate from the Registering Officer appointed by the Government.

 p) Factories Act 1948 :- The Act lays down the procedure for approval at plans before setting up a factory, health and safety provisions, welfare provisions, working hours, annual earned leave and rendering information regarding accidents or dangerous occurances to designated authorities. It is applicable to premises employing 10 persons or more with aid of power or 20 or more persons without the aid of power engaged in manufacturing process.

**VII. Dispute Resolution**

**66. Arbitration**

The procedure for arbitration will be as follows :

1. In case of Dispute or difference arising between the Employer and a Contractor relating to any matter arising out of or connected with this agreement, such disputes or difference shall be settled in accordance with the Arbitration and Conciliation Act, 1996. The arbitral tribunal shall consist of 3 arbitrators one each to be appointed by the Employer and the Contractor. The third Arbitrator shall be chosen by the two Arbitrators so appointed by the Parties and shall act as Presiding arbitrator.
2. Arbitration proceedings shall be held at Durgapur, West Bengal, India, and the language of the arbitration proceedings and that of all documents and communications between the parties shall be English.
3. The decision of the majority of arbitrators shall be final and binding upon both parties. The cost and expenses of Arbitration proceedings will be paid as determined by the arbitral tribunal. However, the expenses incurred by each party in connection with the preparation, presentation, etc. of its proceedings as also the fees and expenses paid to the arbitrator appointed by such party or on its behalf shall be borne by each party itself.
4. Performance under the contract shall continue during the arbitration proceedings and payments due to the contractor by the owners shall not be withheld, unless they are the subject matter of the arbitration proceedings.
5. **Special conditions of contract**

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**I. Resources at project site**

**1. Employer to facilitate**

(a) Power will be provided by the Employer at one point with a submeter and commensurate deduction for same will be made from R/A bills of Contractor. The Contractor have to self organize to carry the power to its different work point following the guideline in Cl. 3

(b) Water will be provided by the Employer at one point at Ground level and the Contractor have to carry it to its required points.

(c) The Employer will provide ready vacant, un partitioned floor space within the Project building to Contractor for setting up his Site office, Stores , Laboratory, etc.

(d) The Employer will provide ready vacant portioned space within the Project building to Contractor for setting up Labour camp. The Employer will also provide ready toilets / kitchens for the labours within the close vicinity of the Project site . However the Contractor have to disinfect and maintain it. If the Contractor fails to maintain the labour camp , kitchen and toilet to the required standard , the Employer will get it done and deduct commensurate amount with 50% penalty from RA bill of Contractor.

**2. Contractor to organize at its own cost**

(a) The Contractor has to erect, maintain, clean and dismantle their own setup

 at their own cost.

 (b) The Contractor has to secure their own materials in store and in installed

 position till the date of handover at their own cost.

 **(c)** The Contractor has to organize the accurate setting out and layout of the

work from drawings provided to them.

1. From the commencement to certified handover of whole work, the

 contractor has to take care of all temporary and permanent work partly or fully completed. The Employer will not be responsible for any damage of completed work, whatsoever in nature and will not pay any extra amount for redoing the same.

1. The Contractor has to accommodate and coordinates other Contractors working parallaly in the same site.
2. The Contractor has to organize temporary electrical line from supply given to him to required work point as per guideline given in Cl.3.
3. The Contractor have to provide all necessary facility to Engineer for any outstation pre delivery inspection or testing at site.

**3. Guideline for temporary electrical work**

1. Temporary power supply will be provided to the Contractor through a direct reading 3 Phase 4 wire Energy meter from a TPN switch fuse unit located in a panel at 4th Floor.
2. The Contractor will have to organize temporary rising main comprising of 4 Nos. 6 Sq mm FRLS PVC insulated copper wire , IS Marked, of reputed make through 25mm dia. Rigid PVC conduit in the electrical shaft designated for this purpose. The wires will be looped in and out of metallic switchboards in each floor of their operation with hylam/ acrylic sheet cover housing a 20A 4P MCB, 3 Nos 6/16 A sockets , each with a 16 A controlling switch and a single phase 20A industrial socket with a 20A SP controlling MCB.
3. All wire terminations should be provided with sockets.
4. All supplies from the switchboard will be through plugs of adequate rating. The Owner reserves the right to disconnect supply to or penalize any Contractor if it is found that wires have been inserted directly in the sockets without plugs.
5. There should not be any joints in the wires used for construction purpose ,except inside switchboxes.
6. Proper junction boxes with terminals should be used if any tapping is needed from the temporary wires.
7. A register will be maintained in Project office showing monthly meter readings of each Contractor, jointly signed by representative of Owner , PMC & Contractor.

h) While taking 3Ph.4Wire power line to different floors, the Contractor shall invariably draw 2nos insulated earth conductor of approved section of copper wire (without any joint) along the cable line from Earth Bus in the panel board.

i )All electrical equipments used by the Vendors shall have sound earthing system and to be connected rigidly to main EARTH through 3rd pin of plug top.

j) The Contractor shall follow the color code of cables as Red, Yellow, Blue for phases ,Black for Neutral, and Green for Earth conductors to avoid confusion at receiving end and possibility of accident.

k)The Contractor shall select their terminal /control equipments precisely so that their source of supply is disturbed as less as possible.

l)The polyphase power line must be handled with Licensed electrician and all electrical activities shall be governed as per rule of Directorate of Electricity ,Govt.Of.West Bengal as amended up to date from time to time.

**II. Bonus & Penalty**

**4 Bonus**

 The Employer may give bonus to the Contractor for early completion in terms and condition as mutually agreed during continuance of the contract.

**5 Penalty**

The Employer may impose penalty on the contractor for delayed completion in terms and conditions as mutually agreed during continuance of the contract.

 The Employer may also impose penalty maximum @ 20% of work value for bad quality of work , in disciplinary activity at site , non compliance of statutory documents , faulty temporary electrical work at site etc. with prior notice.

**III. Payment terms**

**6. Mobilization advance**

TheEmployer can give ‘Mobilization advance’ of value maximum 10% of contract value, against 100% Bank Guarantee , in format as approved by the Employer. The same to be adjusted from running bills @ 10% of bill value . The entire amount to be adjusted by the semi final bill.

**7 Secured advance**

 The Employer can give ‘Secured Advance’ against inventories procured at site of value maximum 70% of the value of the inventories. The Contractor should procure the inventories in consultation with the Engineer. Inventories procured unilaterally and which will not be required for work within next three months will not be considered for ‘Secured Advance’. The Contractor have to submit supporting documents , acceptable to Engineer , to establish the value of the inventories Full value of ‘Secured Advance’ will be adjusted from running bills where items involving the inventories has been taken .

**8 Running bill**

Measurement sheets to be submitted to Engineer at first for certification. Once the measurement sheets are certified , the Contractor can raise the running bill on the said quantity . All statutory uptodate documents to be attached with the running bill. Bill will be processed by Engineer only if all statutory documents are compliant . TDS & WCT to be deducted from running bill. Value of Electricity consumed to be adjusted from running bill. Running bill of value less than Rs. 25 Lakh will not be accepted .

**9 Payment lead time**

 The payment lead time for Mobilization advance , Secured advance or Running bills will be 15 days from date of certification by Engineer.

**IV. Obtaining NOC from sanctioning Authority**

10The Contractor have to facilitate in obtaining the NOC from relevant sanctioning authority at no extra cost to the Employer. The Employer will only pay the former fees to the Authority and any incidental expenses.

**V Liquidated damage**

11 The Employer will deduct Liquidated Damage @ 1 % of the total contract value per month for delay of work , considering start date and completion time in Contract data ,subject to a maximum of 10% of the total contract value. If the Engineer apprehends a delay , the Employer can retain an additional 1% from each running bill to create provision for Liquidated damage , even before the formal completion date , with prior notice to the Contractor.

1. **Contract data**

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**IV Communication details**

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**V The Project site**

 9 Project address : 54

**I Start date & Completion time**

1The start date is 15th September , 2015

2 The completion time is 12 months

**3 Milestone**

 Overall completion time is 12 months from start date. However the total time is broken down to Milestones

 The Milestone for Completion are as following.

Milestone – 1

Milestone – 2

Milestone – 3

**II Defect Liability period**

4 Defect liability period

The defect liability period will be 12 months from date of handover.

**III Retention Money**

**5** Retention money

 10% of all running bills will be retained. 5% will be released on successful handover and balance 5% after Defect Liability Period.

**IV Communication details**

**6 Contract address for letters**

 **Employer’s address :**

 **Contractor’s address :**

**7. Contract ID for E-mail**

 **Employer’s E-mail :**

 **Contractor’s E-mail :**

 **PMC ‘s E-mail** :

**8. Autorized person :**

The authorized person of Employer to sign the Contract and related documents is Sri. ………………, Director and that of Contractor is Sri. …………….

V The Project site

9 Project address :

1. **Technical specification**
2. **Schedule of rates**