

***NTPC LIMITED***  
*(A Government of India Enterprise)*



***SECTION – IV***

***GENERAL CONDITIONS OF CONTRACT  
(GCC)***

(APPLICABLE FOR E-TENDERS INVITED FOR THE FOLLOWING PACKAGES AND TYPE/MODE OF  
BIDDING:

PACKAGES: SUPPLY-CUM-INSTALLATION/ SUPPLY-CUM-INSTALLATION-CUM-CIVIL  
MODE: ICB/DCB  
TYPE: SINGLE STAGE TWO ENVELOPE/TWO STAGE)

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**A. Contract and Interpretation**

**1. Definitions**

**1.1**

**Definitions**

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

“Contract” means the Contract Agreement entered into between the Employer and the Contractor, together with the Contract Documents referred to therein; they shall constitute the Contract, and the term “the Contract” shall in all such documents be construed accordingly.

“Contract Documents” means the documents listed in Article 1.1 (Contract Documents) of the Form of Contract Agreement (including any amendments thereto).

“GCC” means the General Conditions of Contract hereof.

“SCC” means the Special Conditions of Contract.

“Day” means calendar day of the Gregorian Calendar.

“Month” means calendar month of the Gregorian Calendar.

“Employer” means the person named as such in the SCC and includes the legal successors or permitted assigns of the Employer.

“Project Manager” means the person appointed by the Employer in the manner provided in GCC Sub-Clause 17.1 (Project Manager) hereof and named as such in the SCC to perform the duties delegated by the Employer.

“Contractor” means the person(s) whose bid to perform the Contract has been accepted by the Employer and is named as such in the Contract Agreement, and includes the legal successors or permitted assigns of the Contractor.

“Contractor’s Representative” means any person nominated by the Contractor and approved by the Employer in the manner provided in GCC Sub-Clause 17.2 (Contractor’s Representative and Construction Manager) hereof to perform the duties delegated by the Contractor.

“Subcontractor,” including vendors, means any person to whom execution of any part of the Facilities, including preparation of any design or supply of any Plant and Equipment, is sub-contracted directly or indirectly by the Contractor, and includes its legal successors or permitted assigns.

“Contract Price” means the sum specified in Article 2.1 (Contract Price) of the Contract Agreement, subject to such additions and adjustments thereto or deductions there from, as may be made pursuant to the Contract.

“Facilities” means the Plant and Equipment to be supplied and installed, as well as all the Installation Services to be carried out by the Contractor under the Contract.

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	<p>“Plant and Equipment” means permanent plant, equipment, machinery, apparatus, articles and things of all kinds to be provided and incorporated in the Facilities by the Contractor under the Contract (including the spare parts to be supplied by the Contractor under GCC Sub-Clause 7.3 hereof), but does not include Contractor’s Equipment.</p> <p>“Installation Services” means all those services ancillary to the supply of the Plant and Equipment for the Facilities, to be provided by the Contractor under the Contract; e.g., transportation and provision of marine or other similar insurance, inspection, expediting, Site preparation works (including the provision and use of Contractor’s Equipment and the supply of all construction materials required), installation, testing, pre-commissioning, commissioning, operations &amp; maintenance required for achieving Completion of Facilities, the provision of operations and maintenance manuals, training of Employer’s Personnel etc.</p> <p>“Contractor’s Equipment” means all plant, facilities, equipment, machinery, tools, apparatus, appliances or things of every kind required in or for installation, completion and maintenance of Facilities that are to be provided by the Contractor, but does not include Plant and Equipment, or other things intended to form or forming part of the Facilities.</p> <p>“Site” means the land and other places upon which the Facilities are to be installed, and such other land or places as may be specified in the Contract as forming part of the Site.</p> <p>“Effective Date” means the date from which the Time for Completion shall be determined as stated in Article 3 (Effective Date for Determining Time for Completion) of the Form of Contract Agreement.</p> <p>“Time for Completion” means the time within which Completion of the Facilities as a whole (or of a part of the Facilities where a separate Time for Completion of such part has been prescribed) is to be attained in accordance with the stipulations in the SCC and the relevant provisions of the Contract.</p> <p>“Completion” means that the Facilities (or a specific part thereof where specific parts are specified in the SCC) have been completed operationally and structurally and put in a tight and clean condition, and that all work in respect of Pre-commissioning of the Facilities or such specific part thereof has been completed; and Commissioning has been attained as per Technical Specifications.</p> <p>“Pre-commissioning” means the testing, checking and other requirements specified in the Technical Specifications that are to be carried out by the Contractor in preparation for Commissioning as provided in GCC Clause 24 (Completion) hereof.</p> <p>“Commissioning” means trial/initial operation of the Facilities or any part thereof by the Contractor, which operation is to be carried out by the Contractor as provided in GCC Sub-Clause 25.1 (Commissioning) hereof, for the purpose of carrying out Guarantee Test(s).</p> <p>“Guarantee Test(s)” means the test(s) specified in the Technical Specifications to be carried out to ascertain whether the Facilities or a specified part thereof is able to attain the Functional Guarantees specified</p>

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	<p>in the Technical Specifications in accordance with the provisions of GCC Sub-Clause 25.2 (Guarantee Test) hereof.</p> <p>“Operational Acceptance” means the acceptance by the Employer of the Facilities (or any part of the Facilities where the Contract provides for acceptance of the Facilities in parts), which certifies the Contractor’s fulfilment of the Contract in respect of Functional Guarantees of the Facilities (or the relevant part thereof) in accordance with the provisions of GCC Clause 28 (Functional Guarantees) hereof and shall include deemed acceptance in accordance with GCC Clause 25 (Commissioning and Operational Acceptance) hereof.</p> <p>“Defect Liability Period” means the period of validity of the warranties given by the Contractor commencing at Completion of the Facilities or a part thereof, during which the Contractor is responsible for defects with respect to the Facilities (or the relevant part thereof) as provided in GCC Clause 27 (Defect Liability) hereof.</p> <p>“Goods and Services Tax” or “GST” means taxes levied under the Central Goods and Services Tax Act, Integrated Goods and Services Tax Act, Goods and Services Tax (Compensation to States) Act and various State/Union Territory Goods and Services Tax Laws and applicable cesses, if any under the laws in force (hereinafter referred to as relevant GST Laws).”</p>
<p><b>2. Contract Documents</b></p>	<p>2.1 Subject to Article 1.2 (Order of Precedence) of the Contract Agreement, all documents forming part of the Contract (and all parts thereof) are intended to be correlative, complementary and mutually explanatory. The Contract shall be read as a whole.</p> <p>2.2 The Contract will be signed in three originals and the Contractor shall be provided with one signed original and the rest will be retained by the Employer.</p> <p>2.3 The Contractor shall provide free of cost to the Employer all the engineering data, drawing and descriptive materials submitted with the bid, in at least six (6) copies to form a part of the Contract immediately after Notification of Award.</p> <p>2.4 Subsequent to signing of the Contract, the Contractor at his own cost shall provide the Employer with at least twenty (20) copies of electronic version of the signed Contract Agreement on CD-ROM within thirty (30) days of its signing.</p>
<p><b>3. Interpretation</b></p>	<p><b>3.1 Language</b></p> <p>3.1.1 Unless the Contractor is a national of the Employer’s country and the Employer and the Contractor agree to use the local language, all Contract Documents, all correspondence and communications to be given, and all other documentation to be prepared and supplied under the Contract shall be written in English, and the Contract shall be construed and interpreted in accordance with that language.</p>
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Clause No.	GENERAL CONDITIONS OF CONTRACT (GCC)
	<p data-bbox="459 216 1377 359">3.1.2 If any of the Contract Documents, correspondence or communications are prepared in any language other than the governing language under GCC Sub-Clause 3.1.1 above, the English translation of such documents, correspondence or communications shall prevail in matters of interpretation.</p> <p data-bbox="459 390 1377 562">3.1.3 The English Translation of the documents shall be carried out by professional translators and the translator shall certify that he is proficient in both languages in order to translate the document and that the translation is complete and accurate. Further, translation shall be authenticated by the Indian Consulate located in the Country where the documents have been issued or the Embassy of that Country in India.</p> <p data-bbox="459 594 1377 716">3.2 <b>Singular and Plural</b>  The singular shall include the plural and the plural the singular, except where the context otherwise requires.</p> <p data-bbox="459 747 1377 890">3.3 <b>Headings</b>  The headings and marginal notes in the General Conditions of Contract are included for ease of reference, and shall neither constitute a part of the Contract nor affect its interpretation.</p> <p data-bbox="459 921 1377 1043">3.4 <b>Persons</b>  Words importing persons or parties shall include firms, corporations and government entities.</p> <p data-bbox="459 1075 1377 1339">3.5 <b>Incoterms</b>  Unless inconsistent with any provision of the Contract, the meaning of any trade term and the rights and obligations of parties thereunder shall be as prescribed by Incoterms.  Incoterms means international rules for interpreting trade terms published by the International Chamber of Commerce (latest edition), 38 Cours Albert 1er, 75008 Paris, France.</p> <p data-bbox="459 1371 1377 1459">3.6 <b>Construction of the Contract</b>  <b>FOR INTERNATIONAL COMPETITIVE BIDDING (ICB) TENDER</b></p> <p data-bbox="459 1491 1377 1873">3.6.1 The Contracts to be entered into between the Employer and the successful bidder shall be as under:  For Foreign Bidder  -- First Contract: For CIF (Indian port-of-entry) supply of all Plant and Equipment including Mandatory Spares to be supplied from abroad  -- Second Contract: For Ex-works (India) supply of Plant and Equipment including Mandatory Spares.  -- Third Contract : For providing all services i.e. port handling, port clearance and port charges for the imported goods, further loading,</p>
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	<p>inland transportation for delivery at site, inland transit insurance, unloading, storage, handling at site, installation, insurance covers other than inland transit insurance, erection, testing, commissioning and conducting Guarantee tests in respect of all the equipment supplied under the 'First Contract' &amp; the 'Second Contract' and all other services as specified in the Contract Documents.</p> <p>If the foreign bidder has proposed an Assignee in his bid to execute the Second Contract and/or the Third Contract and has also furnished written unequivocal consent of the proposed Assignee to work as independent Contractor on the terms and conditions offered by the bidder and if the Employer is satisfied with capacity and experience of the Assignee, the Employer will enter into the 'Second Contract' and/or 'Third Contract' with the said Assignee. In case no Assignee has been proposed by the foreign bidder in his bid or if the Assignee fails to enter into the Second Contract and/or Third Contract with the Employer or if the Employer in its judgment does not find acceptance of the proposed Assignee as its Contractor, then the foreign bidder shall be obliged to enter into and execute all the three Contracts with the Employer.</p> <p>For Domestic Bidder</p> <ul style="list-style-type: none"> <li>-- First Contract: For CIF (Indian port-of-entry) supply of Plant and equipment including Mandatory Spares to be supplied from abroad</li> <li>-- Second Contract: For Ex-works (India) supply of Plant and Equipment including Mandatory Spares.</li> <li>-- Third Contract : For providing all services i.e. port handling, port clearance and port charges for the imported goods, further loading, inland transportation for delivery at site, inland transit insurance, unloading, storage, handling at site, installation, insurance covers other than inland transit insurance, erection, testing, commissioning and conducting Guarantee tests in respect of all the equipment supplied under the 'First Contract' &amp; the 'Second Contract' and all other services as specified in the Contract Documents.</li> </ul> <p>3.6.2 The award of separate Contracts shall not in any way dilute the responsibility of the Contractor for the successful completion of the Facilities as per Contract Documents and a breach in one Contract shall automatically be construed as a breach of the other Contract(s) which will confer a right on the Employer to terminate the other Contract(s) also at the risk and the cost of the Contractor</p> <p><b>FOR DOMESTIC COMPETITIVE BIDDING (DCB) TENDER</b></p> <p>3.6.1 The Contracts to be entered into between the Employer and the successful bidder shall be as under:</p> <ul style="list-style-type: none"> <li>- First Contract: For Ex-works (India) supply of Plant and Equipment including Mandatory Spares.</li> <li>- Second Contract: For providing all services i.e. inland transportation for delivery at site, inland transit insurance, unloading, storage, handling at site, installation, insurance covers other than inland transit insurance,</li> </ul>
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	<p>testing and commissioning including carrying out guarantee tests in respect of all the Plant and Equipment supplied under the 'First Contract' and all other services specified in the Contract Documents.</p> <p>3.6.2 The award of separate Contracts shall not in any way dilute the responsibility of the Contractor for the successful completion of the Facilities as per Contract Documents and a breach in one Contract shall automatically be construed as a breach of the other Contract(s) which will confer a right on the Employer to terminate the other Contract(s) also at the risk and the cost of the Contractor.</p> <p>3.7 <b>Entire Agreement</b></p> <p>Subject to GCC Sub-Clause 16.4 hereof, the Contract constitutes the entire agreement between the Employer and Contractor with respect to the subject matter of Contract and supersedes all communications, negotiations and agreements (whether written or oral) of parties with respect thereto made prior to the date of Contract.</p> <p>3.8 <b>Amendment</b></p> <p>No amendment or other variation of the Contract shall be effective unless it is in writing, is dated, expressly refers to the Contract, and is signed by a duly authorized representative of each party hereto.</p> <p>3.9 <b>Independent Contractor</b></p> <p>The Contractor shall be an independent contractor performing the Contract. The Contract does not create any agency, partnership, joint venture or other joint relationship between the parties hereto.</p> <p>Subject to the provisions of the Contract, the Contractor shall be solely responsible for the manner in which the Contract is performed. All employees, representatives or Subcontractors engaged by the Contractor in connection with the performance of the Contract shall be under the complete control of the Contractor and shall not be deemed to be employees of the Employer, and nothing contained in the Contract or in any subcontract awarded by the Contractor shall be construed to create any contractual relationship between any such employees, representatives or Subcontractors and the Employer.</p> <p>3.10 <b>Joint Venture or Consortium</b></p> <p>If the Contractor is a joint venture or consortium of two or more firms, all such firms shall be jointly and severally bound to the Employer for the fulfilment of the provisions of the Contract and shall designate one of such firms to act as a leader with authority to bind the joint venture or consortium. The composition or the constitution of the joint venture or consortium shall not be altered without the prior consent of the Employer.</p> <p>3.11 <b>Non-Waiver</b></p> <p>3.11.1 Subject to GCC Sub-Clause 3.11.2 below, no relaxation, forbearance, delay or indulgence by either party in enforcing any of the terms and conditions of the Contract or the granting of time by either party to the other shall prejudice, affect or restrict the rights of that party under the Contract, nor shall any waiver by</p>

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	<p>either party of any breach of Contract operate as waiver of any subsequent or continuing breach of Contract.</p> <p>3.11.2 Any waiver of a party's rights, powers or remedies under the Contract must be in writing, must be dated and signed by an authorized representative of the party granting such waiver, and must specify the right and the extent to which it is being waived.</p> <p>3.12 <b>Severability</b></p> <p>If any provision or condition of the Contract is prohibited or rendered invalid or unenforceable, such prohibition, invalidity or unenforceability shall not affect the validity or enforceability of any other provisions and conditions of the Contract.</p> <p>3.13 <b>Country of Origin</b></p> <p>"Origin" means the place where the materials, equipment and other supplies for the Facilities are mined, grown, produced or manufactured, and from which the services are provided.</p>
4. <b>Notices</b>	<p>4.1 Unless otherwise stated in the Contract, all notices to be given under the Contract shall be in writing, and shall be sent by personal delivery, airmail post, special courier, cable, telegraph, telex, facsimile or Electronic Data Interchange (EDI) to the address of the relevant party set out in the Contract Coordination Procedure to be finalised pursuant to GCC Sub-Clause 17.2.3.1, with the following provisions.</p> <p>4.1.1 Any notice sent by cable, telegraph, facsimile or EDI shall be confirmed within two (2) days after despatch by notice sent by airmail post or special courier, except as otherwise specified in the Contract.</p> <p>4.1.2 Any notice sent by airmail post or special courier shall be deemed (in the absence of evidence of earlier receipt) to have been delivered ten (10) days after despatch. In proving the fact of despatch, it shall be sufficient to show that the envelope containing such notice was properly addressed, stamped and conveyed to the postal authorities or courier service for transmission by airmail or special courier.</p> <p>4.1.3 Any notice delivered personally or sent by telegraph, facsimile shall be deemed to have been delivered on date of its despatch.</p> <p>4.1.4 Either party may change its postal, cable, telex, facsimile or EDI address or addressee for receipt of such notices by ten (10) days' notice to the other party in writing.</p> <p>4.2 Notices shall be deemed to include any approvals, consents, instructions, orders and certificates to be given under the Contract.</p>
5. <b>Governing Laws</b>	<p>5.1 The Contract shall be governed by and interpreted in accordance with laws in force in India. The Courts of Delhi shall have exclusive jurisdiction in all matters arising under the Contract.</p>

**6. Settlement of Disputes****6.1 Mutual Consultation**

If any dispute of any kind whatsoever shall arise between the Employer and the Contractor in connection with or arising out of the Contract, including without prejudice to the generality of the foregoing, any question regarding its existence, validity or termination, or the execution of the Facilities, whether during the progress of the Facilities or after their completion and whether before or after the termination, abandonment or breach of the Contract, the parties shall seek to resolve any such dispute or difference by mutual consultation. If the parties fail to resolve such a dispute or difference by mutual consultation, then the dispute may be settled through Expert Settlement Council / Arbitration / other remedies available under the applicable laws.

**6.2 Resolution of Dispute through Expert Settlement Council**

If the parties fail to resolve such a dispute or difference by mutual consultation, the dispute if the parties agree, may be referred to Conciliation in cases involving disputed amount up to Rs 250 crores, which is to be arrived at considering the claim and counter claim of the parties to the dispute.

**6.2.1 Invitation for Conciliation:**

6.2.1.1 A party shall notify the other party in writing about such a dispute it wishes to refer for Conciliation within a period of 30 days from the date of raising of the dispute in case of failure to resolve the same through mutual consultation. Such Invitation for Conciliation shall contain sufficient information as to the dispute to enable the other party to be fully informed as to the nature of the dispute, amount of the monetary claim, if any, and apparent cause of action.

6.2.1.2 Upon acceptance of the invitation to conciliate, the other party shall submit its counter claim, if any, within a period of 30 days from the date of the invitation to conciliate. If the other party rejects the invitation or disputed amount exceeds Rs 250 crores, there will be no Conciliation proceedings. There shall be no Conciliation where claim amount is only up to Rs 5 lakhs.

6.2.1.3 If the party initiating Conciliation does not receive a reply within thirty days from the date on which it sends the invitation, or within such other period of time as specified in the invitation, it shall treat this as a rejection of the invitation to conciliate from the other party.

**6.2.2 Conciliation:**

6.2.2.1 Where Invitation for Conciliation has been furnished under GCC sub clause 6.2.1, the parties shall attempt to settle such dispute through Expert Settlement Council (ESC) which shall be constituted by CMD, NTPC.

6.2.2.2 ESC will be formed from experts comprising of three members from the panel of conciliators maintained by NTPC. However, there will be single member ESC for disputes involving claim and counter claim (if any) up to Rs. 1 crore. CMD will have authority to reconstitute an ESC to fill any vacancy.

6.2.2.3 The eligible persons for consideration for empanelment in the panel of conciliators shall be amongst Retired Civil Servants of Govt. of India not below the rank of Joint Secretary, Retired Judges, Retired Executive directors/Directors/ Chairman of any Maharatna / Navratna company in India other than NTPC Ltd, Retired Independent Directors who have served on the Board of any Maharatna / Navratna company in India other than NTPC Ltd and Independent experts in their respective fields preferably registered with the Indian Council of Arbitration or Delhi International Arbitration Centre or Federation of Indian Chambers of Commerce and Industry or SCOPE Arbitration Forum.

#### 6.2.3 Proceedings before ESC:

6.2.3.1 The claimant shall submit its statement of claims along with relevant documents to ESC members, and to the party(s) indicated in the appointment letter within 30 days of the issue of the appointment letter. The respondent shall file its reply and counter claim (if any) within 30 days of the receipt of the statement of claims. Parties may file their rejoinder/additional documents, if any in support of their claim/counterclaim within next 15 days. No documents shall be allowed thereafter, except with the permission of ESC.

6.2.3.2 The parties shall file their claim and counterclaim in the following format

- a. Chronology of the dispute
- b. Brief of the contract
- c. Brief history of the dispute
- d. Issues

Sl. No.	Description of Claims/ Counter claims	Amount (in foreign currency/INR)	Relevant Contract Clause

e. Details of Claim(s)/Counter Claim(s)

f. Basis/Ground of claim(s)/counter claim(s) (along with relevant clause of contract)

Note: Statement of claims shall be restricted to maximum limit of 20 pages.

6.2.3.3 In case of 3 members ESC, 2 members will constitute a valid quorum and the meeting can take place to proceed in the matter after seeking consent from the member who is not available. However, ESC recommendations will be signed by all the members.

6.2.3.4 The parties shall be represented by their in house employees. No party shall be allowed to bring any advocate or outside consultant/advisor/agent to contest on their behalf. Ex-officers of NTPC who have handled the subject matter in any capacity shall not be allowed to attend and present the case before ESC on behalf of contractor. However, ex-employees of parties may represent their respective organizations. Parties shall not claim any interest on claims/counter-claims from the date of notice invoking Conciliation till execution of settlement agreement, if so arrived. In case, parties are unable to reach a settlement, no interest shall be claimed by either party for the period from the date of notice invoking Conciliation till the date of ESC recommendations and 30 days thereafter in any further proceeding.

6.2.3.5 ESC will conclude its proceedings in maximum 10 meetings, and give its recommendations within 90 days of its first meeting. ESC will give its recommendations to both the parties recommending possible terms of settlement. CMD, NTPC may extend the time/number of meetings, in exceptional cases, if ESC requests for the same with sufficient reasons.

6.2.3.6 Depending upon the location of ESC members and the parties, the venue of the ESC meeting shall be either Delhi/Mumbai/Kolkata/Chennai or any other city whichever is most economical from the point of view of travel and stay etc. All the expenditure incurred in ESC proceedings shall be shared by the parties in equal proportion.

**6.2.4 Fees & Facilities to the Members of the ESC**

The cost of conciliation proceedings including but not limited to fees for Conciliator, Airfare, Local transport, Accommodation, cost towards conference facility etc shall be as provided herein below:

Sl.No.	Fees/ Facility	Entitlement

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	1	Fees	As paid to NTPC Independent Directors [Presently Rs. 20,000 per meeting]. In addition each conciliator to be paid Rs 10,000 for attending meeting to authenticate the settlement agreement. - max. of Rs. 2,10,000 per case per Conciliator.
	2	Secretarial expenses	Rs. 10,000 lump sum (to 1 member only).
	3	Transportation in the city of the meeting	Car as per entitlement or Rs. 2,000 per day
	4	Venue for meeting	NTPC conference rooms
	Facilities to be provided to the out-stationed member		
	5	Travel from the city of residence to the city of meeting	As per entitlement of Independent Directors. Executive class air tickets / first class AC train tickets/ Luxury car/ reimbursement of actual fare. However, entitlement of air travel by Business class shall be subject to austerity measures, if any, ordered by Govt of India.
	6	Transport to and fro airport/ railway station in the city of residence	Car as per entitlement or Rs. 3,000
	7	Stay for out stationed members	As per entitlement of Independent Directors.
	8	Transport in the city of meeting	Car as per entitlement or Rs. 2000 per day
<p>Aforesaid fees is subject to revision by NTPC from time to time and subject to government guidelines on austerity measures, if any. All the expenditure incurred in the ESC proceedings shall be shared by the parties in equal proportions. The Parties shall maintain the account of expenditure and present to the other for the purpose of sharing on conclusion of the ESC proceedings.</p> <p>6.2.5 If decision of NTPC is acceptable to the contractor, a Settlement Agreement under section 73 of the Arbitration and Conciliation</p>			

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	<p>Act 1996 will be signed within 15 days of contractor's acceptance and same shall be authenticated by all the ESC members. Parties are free to terminate Conciliation proceedings at any stage as provided under the Arbitration and Conciliation Act 1996.</p> <p>6.2.6 The parties shall keep confidential all matters relating to the Conciliation proceedings. Parties shall not rely upon them as evidence in arbitration proceedings or court proceedings.</p> <p><b>Arbitration</b></p> <p>6.3</p> <p>6.3.1 If the process of mutual consultation and/or ESC fails to arrive at a settlement between the parties as mentioned at GCC Sub-Clauses 6.1 &amp; 6.2 above, Employer or the Contractor may, within Thirty (30) days of such failure, give notice to the other party, with a copy for information to the ESC (as applicable), of its intention to commence arbitration, as hereinafter provided, as to the matter in dispute, and no arbitration in respect of this matter may be commenced unless such notice is given. The mechanism of settling the disputes through arbitration shall be applicable only in cases where the disputed amount (i.e. total amount of Claims excluding claims of interest) does not exceed Rs. 25 crores. In case the disputed amount exceeds Rs. 25 Crores, the parties shall be within their rights to take recourse to remedies as may be available to them under the applicable laws other than Arbitration after prior intimation to the other party. There shall be no arbitration where the claim amount is only up to Rs. 5 lakhs.</p> <p>The parties at the time of invocation of arbitration shall submit all the details of the claims and the counter-claims including the Heads/Sub-heads of the Claims/Counter-Claims and the documents relied upon by the parties for their respective claims and counter-claims. The parties shall not file any documents/details of the claims and counter-claims thereafter.</p> <p>The claims and the counter claims raised by the parties at the time of invocation of the arbitration shall be final and binding on the parties and no further change shall be allowed in the same at any stage during arbitration under any circumstances whatsoever.</p> <p>The parties to the contract shall invoke arbitration within Six months from the date of completion of the Facilities under the contract or the termination of the contract as the case may be and the parties shall not invoke arbitration later on after expiry of the said period of six months. The parties shall not invoke arbitration other than in the case of completion of the Facilities or the termination of the contract as mentioned above.</p>
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Notwithstanding the above, in case of disputes with Indian Contractor who is a Central Government Department /Enterprise /organisation or a State Level Public Enterprise (SLPE), the aforesaid limit of Rs 25 crores shall not be applicable and arbitration proceeding may be commenced irrespective of the amount involved in dispute if the dispute could not be resolved through Conciliation as brought out at GCC Sub Clause 6.2 above.

6.3.2 Any dispute in respect of which a notice of intention to commence arbitration has been given, in accordance with GCC Sub Clause 6.3.1, shall be finally settled by arbitration.

6.3.3 Any dispute raised by a party to arbitration shall be adjudicated by a Sole Arbitrator appointed by CMD, NTPC from the List of empanelled Arbitrators of NTPC in the following manner :-

- a) A party willing to commence arbitration proceeding shall invoke Arbitration Clause by giving 60 days notice to the other party.
- b) If the Arbitrator so appointed dies, resigns, becomes incapacitated or withdraws for any reason from the proceedings, it shall be lawful for CMD, NTPC to appoint another person in his place in the same manner as aforesaid. Such person shall proceed with the reference from the stage where his predecessor had left.
- c) It is agreed between the parties that the Arbitration proceedings shall be conducted as per the provisions of Fast Track Procedure as provided under section 29B of the Arbitration and Conciliation Act, 1996 as amended.
- d) Arbitrator shall be paid fees at the following rates:

<b>Amount of Claims and Counter Claims (excluding interest)</b>	<b>Lump sum fees (including fees for study of pleadings, case material, writing of the award, secretarial charges etc.) to be shared equally by the parties.</b>
Upto Rs 50 lakhs	Rs. 10,000 per meeting subject to a ceiling of Rs. 1,00,000/-.
Above Rs 50 lakhs to Rs 1 crore	Rs. 1,35,000/- plus Rs. 1,800/- per lakh or a part there of subject to a ceiling of Rs. 2,25,000/-.

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<i>Above Rs. 1 crore and upto Rs. 5 Crores</i>	<i>Rs. 2,25,000/- plus Rs. 33,750 per crore or a part there of subject to a ceiling of Rs. 3,60,000/-.</i>
<i>Above Rs. 5 crores and upto Rs. 10 crores.</i>	<i>Rs. 3,60,000/- plus Rs. 22,500/- per crore or a part there of subject to a ceiling of Rs. 4,72,500/-.</i>
<i>Above Rs. 10 crores</i>	<i>Rs. 4,72,500 plus Rs. 18,000/- per crore or part thereof subject to a ceiling of Rs. 10,00,000/-.</i>

If the claim is in foreign currency, the SBI Bills Selling Exchange rate prevailing on the date of claim shall be used for the purpose of converting the claim in Indian Rupee which may be used for determining the arbitration fee as brought out above.

- e) If after commencement of the Arbitration proceedings, the parties agree to settle the dispute mutually or refer the dispute to Conciliation, the arbitrator shall put the proceedings in abeyance until such period as requested by the parties. Where the proceedings are put in abeyance or terminated on account of mutual settlement of dispute by the parties, the fees payable to the arbitrator shall be determined as under:
- (i) 40% of the fees if the Pleadings are complete.
  - (ii) 60% of the fees if the Hearing has commenced.
  - (iii) 80% of the fees if the Hearing is concluded but the Award is yet to be passed.
- f) Each party shall pay its share of arbitrator's fees in stages as under:
- (i) 40 % of the fees on Completion of Pleadings.
  - (ii) 40% of the fees on Conclusion of the Final Hearing.
  - (iii) 20% at the time when arbitrator notifies the date of final award.
- g) The Claimant shall be responsible for making all necessary arrangements for the travel/ stay of the Arbitrator including venue of arbitration, hearings. The parties shall share the expenses for the same equally.

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	<p>h) The Arbitration shall be held at Delhi only.</p> <p>i) The Arbitrator shall give reasoned and speaking award and it shall be final and binding on the parties.</p> <p>j) Subject to the aforesaid conditions, provisions of the Arbitration and Conciliation Act, 1996 and any statutory modifications or re-enactment thereof shall apply to the arbitration proceedings under this clause.</p> <p>6.3.4 In case the Indian Contractor is a Central Government Department/Enterprise/organisation or a State Level Public Enterprise (SLPE), the dispute arising between the Employer and the Contractor shall be referred for resolution to the Permanent Machinery of Arbitrators (PMA) of the Department of Public Enterprises, Government of India as per Office Memorandum No. 4(1) 2011-DPE(PMA)-GL dated 12.06.2013 issued by Government of India, Ministry of Heavy Industries and Public Enterprises, Department of Public Enterprises and its further modifications and amendments.</p> <p>6.4 Notwithstanding any reference to the Conciliation or Arbitration herein,</p> <p>(a) the parties shall continue to perform their respective obligations under the Contract unless they otherwise agree.</p> <p>(b) the Employer shall pay the Contractor any monies due to the Contractor.</p>
<p><b>7. Scope Of Facilities</b></p> <p>7.1</p>	<p>Unless otherwise expressly limited in the Technical Specifications, the Contractor's obligations cover the provision of all Plant and Equipment including structural steel and the performance of all Installation Services and civil works, allied works etc. required for the design, the manufacture (including procurement, quality assurance, construction, installation, associated civil works, Pre-commissioning and delivery) of the Plant and Equipment and the installation, completion, commissioning and performance testing of the Facilities in accordance with the plans, procedures, specifications, drawings, codes and any other documents as specified in the Technical Specifications. Such specifications include, but are not limited to, the provision of supervision and engineering services; the supply of labour, materials, equipment, spare parts (as specified in GCC Sub-Clause 7.3 below) and accessories; Contractor's Equipment; construction utilities and supplies; temporary materials, structures and facilities; transportation (including, without limitation, unloading and hauling to, from and at the Site); and storage, except for those supplies, works and services that will be provided or performed by the Employer,</p>
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	<p>as set forth in Appendix 6 (Scope of Works and Supply by the Employer) to the Contract Agreement.</p> <p>7.2 The Contractor shall, unless specifically excluded in the Contract, perform all such work and/or supply all such items and materials not specifically mentioned in the Contract but that can be reasonably inferred from the Contract as being required for attaining Completion of the Facilities as if such work and/or items and materials were expressly mentioned in the Contract.</p> <p>7.3 In addition to the supply of Mandatory Spare Parts included in the Contract, the Contractor agrees to supply spare parts required for the operation and maintenance of the Facilities. However, the identity, specifications and quantities of such spare parts and the terms and conditions relating to the supply thereof are to be agreed between the Employer and the Contractor, and the price of such spare parts shall be that given in Price Schedule No. 6, which shall be added to the Contract Price. The price of such spare parts shall include the purchase price therefor and other costs and expenses (including the Contractor's fees) relating to the supply of spare parts. Prices of recommended spares covered under price Schedule No. 6 shall be kept valid for a period of six (6) months after placement of Notification of Award for Main Equipment and Mandatory Spares.</p> <p>7.3.1 The Contractor agrees that the spare parts recommended by him for 3 years operation and quoted in Schedule No. 6 shall be supplied by him at the same terms and conditions as are otherwise applicable to this Contract. Further, the Contractor also agrees to supply spare parts required for the operation and maintenance of the Facilities as per provision of subsequent paragraphs of this Sub-Clause.</p> <p>7.3.1.1 All the spares for the equipment under the Contract will strictly conform to the Specification and other relevant documents and will be identical to the corresponding main equipment/components supplied under the Contract and shall be fully interchangeable.</p> <p>7.3.1.2 All the mandatory spares covered under the Contract shall be produced alongwith the main equipment as a continuous operation and the delivery of the spares will be effected alongwith the main equipment in a phased manner and the delivery would be completed by the respective dates for the various categories of equipment as per the agreed network. In case of recommended spares the above will be applicable provided the order for the recommended spares have been placed with the Contractor prior to commencement of manufacture of the main equipment.</p> <p>7.3.1.3 The Contractor will provide the Employer with the manufacturing drawings, catalogues, assembly drawings and any other document required by the Employer so as to enable the Employer to identify the recommended spares. Such details will be furnished to the Employer as soon as they are prepared but in any case not later than six months prior to commencement of manufacture of the corresponding main equipment.</p>
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	<p>7.3.1.4 To enable the Employer to finalise the requirement of recommended spares which are ordered subsequent to placement of order for main equipment/plant, in addition to necessary technical details, catalogue and such other information brought-out herein above, the Contractor will also provide a justification in support of reasonableness of the quoted prices of spares which will, inter-alia, include documentary evidence that the prices quoted by the Contractor to the Employer are not higher than those charged by him from other customers in the same period.</p> <p>7.3.1.5 In addition to the spares recommended by the Contractor, if the Employer further identifies certain items of spares, the Contractor will submit the prices and delivery quotation for such spares within thirty (30) days of receipt of such request with a validity period of six (6) months for consideration by the Employer and placement of order for additional spares if the Employer so desires.</p> <p>7.3.1.6 The quality plan and the inspection requirement finalised for the main equipment will also be applicable to the corresponding spares.</p> <p>7.3.1.7 The Contractor will provide the Employer with all the addresses and particulars of his sub-suppliers while placing the order on vendors for items/components/equipment covered under the Contract and will further ensure with his vendors that the Employer, if so desires, will have the right to place order for spares directly on them on mutually agreed terms based on offers of such vendors.</p> <p>7.3.1.8 The Contractor shall guarantee the long term availability of spares to the Employer for the full life of the equipment covered under the Contract. The Contractor shall guarantee that before going out of production of spare parts of the equipment covered under the Contract, he shall give the Employer atleast 2 years advance notice so that the latter may order his bulk requirement of spares, if it so desires. The same provision will also be applicable to Sub-contractors. Further, in case of discontinuance of manufacture of any spares by the Contractor and/or his Sub-contractor, Contractor will provide the Employer, two years in advance, with full manufacturing drawings, material specification and technical information including information on alternative equivalent makes required by the Employer for the purpose of manufacture/procurement of such items.</p> <p>7.3.1.9 The prices of all future requirements of item of spares beyond 3 years operational requirement will be derived from the corresponding Ex-works price at which the order for such spares have been placed by Employer as a part of mandatory spares or recommended spares, or from the rates of mandatory spares or recommended spares as quoted by/negotiated with the Contractor. Ex-works order price of future spares shall be computed in accordance with the price adjustment provisions covered under the main Contract and</p>
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	<p>there will be no ceiling on the amount of variation in the prices. The above option for procuring future recommended spares by the Employer shall remain valid for the period of 5 years from the date of Commissioning of the equipment.”</p> <p>7.3.1.10 The Contractor will indicate in advance the delivery period of the items of spares, which the Employer may procure in accordance with above sub-clause. In case of emergency requirements of spares, the Contractor would make every effort to expedite the manufacture and delivery of such spares on the basis of mutually agreed time schedule.</p> <p>7.3.1.11 In case the Contractor fails to supply the mandatory, recommended or long term spares in the terms stipulated above, the Employer shall be entitled to purchase the same from the alternate sources at the risk and the cost of the Contractor and recover from the Contractor, the excess amount paid by the Employer over the rates worked on the above basis. In the event of such risk purchase by the Employer, the purchases will be as per the Works and Procurement Policy of the Employer prevalent at the time of such purchases and the Employer at his option may include a representative from the Contractor in finalising the purchases.</p> <p>7.3.1.12 It is expressly understood that the final settlement between the parties in terms of relevant clauses of the Contract Documents shall not relieve the Contractor of any of his obligations under the provision of long term availability of spares and such provisions shall continue to be enforced till the expiry of 5 years period reckoned from the scheduled date of Commissioning of the Plant and Equipment unless otherwise discharged expressly in writing by the Employer. Further, the provisions pertaining to long term availability of spares shall be extended beyond 5 years applicability period mentioned hereinabove if so desired by the Employer and at the mutually acceptable escalation formula.</p> <p>7.3.1.13 The Contractor shall warrant that all spares supplied will be new and in accordance with the Contract Documents and will be free from defects in design, material and workmanship and shall further guarantee as under:</p> <p>(i) For 3 years operational spares (both mandatory and recommended)</p> <p>a) For any item of spares ordered or to be ordered by the Employer for 3 years operational requirement of the plant which are manufactured as a continuous operation together with the corresponding main equipment/component, the Defect Liability Period will be twelve (12) months from the scheduled date of commercial operation of main equipment/plant under the Contract. 'Commercial Operation' shall mean the conditions of operation in which the complete equipment covered under the Contract is officially declared by the Employer to be available for continuous operation at different loads upto and</p>
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	<p>including rated capacity. Such declaration by the Employer, however, shall not relieve or prejudice the Contractor any of his obligations under the Contract. In case of any failure in the original component/equipment due to faulty designs, materials and workmanship, the corresponding spare parts, if any, supplied will be replaced without any extra cost to the Employer unless a joint examination and analysis by the Employer and the Contractor of such spare parts prove that the defect found in the original part that failed, can safely be assumed not to be present in spare parts. Such replaced spare parts will have the same Defect Liability as applicable to the replacement made for the defective original part/component provided that such replacement for the original equipment and the spare replaced are again manufactured together. The discarded spare parts will become the property of the Contractor as soon as they have been replaced by the Contractor.</p> <p>b) For the item of spares ordered or to be ordered by the Employer for 3 years operational requirement of the plant, which with the written approval of the Employer, are not manufactured as a continuous operation will be warranted for 7000 hrs of trouble free operation if used within a period of eighteen (18) months reckoned from the date of delivery at site. However, if such spare parts are put to use after eighteen (18) months of the delivery at Site then the guarantee of such spares will stand valid till the expiry of thirty six (36) months from the scheduled date of Commissioning of equipment/plant covered under the contract or 7000 hrs of trouble free operation after such spares are put in service, whichever is earlier.</p> <p>c) For long term requirement</p> <p>For item of spares that may be ordered by the Employer to cover requirements beyond 3 years of Initial Operation of the plant, the warranty will be till the expiry of 7000 hrs of trouble free operation if used within a period of eighteen (18) months from the date of delivery at site. For item of spares that may be used after eighteen (18) months from the date of delivery at site, the warranty period will be 12 months from the date they are put to use or 7000 hrs of trouble free operation, whichever is earlier. In any case the defect liability of spares will expire at the end of forty eight (48) months from the date of their receipt at site.</p> <p>ii) The Defect Liability of spares covered in para (b) &amp; (c) above, that are not used within 18 months from the respective date of the delivery at Site will, however, be subject to condition that all such spares being</p>
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	<p>stored/maintained/preserved in accordance with Contractor's standard recommended practice, if any, and the same has been furnished to the Employer.</p>
<p><b>8. Time for Commencement and Completion</b></p>	<p>8.1 The Contractor shall commence work on the Facilities from the date of Notification of Award and without prejudice to GCC Sub-Clause 26.2 hereof, the Contractor shall thereafter proceed with the Facilities in accordance with the time schedule specified in Appendix 4 (Time Schedule) to the Contract Agreement.</p> <p>8.2 The Contractor shall attain Completion of the Facilities (or of a part where a separate time for Completion of such part is specified in the Contract) within the time stated in the SCC or within such extended time to which the Contractor shall be entitled under GCC Clause 40 (Extension of Time for Completion) hereof.</p>
<p><b>9. Contractor's Responsibilities</b></p>	<p>9.1 The Contractor shall design, manufacture (including associated purchases and/or subcontracting), install and complete the Facilities with due care and diligence in accordance with the Contract.</p> <p>9.2 The Contractor confirms that it has entered into this Contract on the basis of a proper examination of the data relating to the Facilities (including any data as to boring tests) provided by the Employer, and on the basis of information that the Contractor could have obtained from a visual inspection of the Site (if access thereto was available) and of other data readily available to it relating to the Facilities as at the date twenty-eight (28) days prior to deadline set for price bid submission. The Contractor acknowledges that any failure to acquaint itself with all such data and information shall not relieve its responsibility for properly estimating the difficulty or cost of successfully performing the Facilities.</p> <p>9.3 The Contractor shall acquire in its name all permits, approvals and/or licenses from all local, state or national government authorities or public service undertakings in the country where the Site is located that are necessary for the performance of the Contract, including, without limitation, visas for the Contractor's and Subcontractor's personnel and entry permits for all imported Contractor's Equipment. The Contractor shall acquire all other permits, approvals and/or licenses that are not the responsibility of the Employer under GCC Sub-Clause 10.3 hereof and that are necessary for the performance of the Contract.</p> <p>9.4 The Contractor shall comply with all laws in force in the country where the Facilities are installed and where the Installation Services are carried out. The laws will include all national, provincial, municipal or other laws that affect the performance of the Contract and bind upon the Contractor. The Contractor shall indemnify and hold harmless the Employer from and against any and all liabilities, damages, claims, fines, penalties and expenses of whatever nature arising or resulting from the violation of such laws by the Contractor or its personnel, including the Subcontractors and their personnel, but without prejudice to GCC Sub-Clause 10.1 hereof.</p>
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9.5	Any Plant, Material and Services that will be incorporated in or be required for the Facilities and other supplies shall have their origin as specified under GCC Clause 3.13 (Country of Origin).
<b>10. Employer's Responsibilities</b>	
10.1	The Employer shall ensure the accuracy of all information and/or data to be supplied by the Employer as described in Appendix 6 (Scope of Works and Supply by the Employer) to the Contract, except when otherwise expressly stated in the Contract.
10.2	The Employer shall be responsible for acquiring and providing legal and physical possession of the Site and access thereto, and for providing possession of and access to all other areas reasonably required for the proper execution of the Contract, including all requisite rights of way, as specified in Appendix 6 (Scope of Works and Supply by the Employer) to the Contract Agreement. The Employer shall give full possession of and accord all rights of access thereto on or before the date(s) specified in Appendix 6.
10.3	The Employer shall acquire and pay for all permits, approvals and/or licenses from all local, state or national government authorities or public service undertakings in the country where the Site is located which such authorities or undertakings require the Employer to obtain them in the Employer's name, are necessary for the execution of the Contract (they include those required for the performance by both the Contractor and the Employer of their respective obligations under the Contract), including those specified in Appendix 6 (Scope of Works and Supply by the Employer) to the Contract Agreement.
10.4	If requested by the Contractor, the Employer shall use its best endeavours to assist the Contractor in obtaining in a timely and expeditious manner all permits, approvals and/or licenses necessary for the execution of the Contract from all local, state or national government authorities or public service undertakings that such authorities or undertakings require the Contractor or Subcontractors or the personnel of the Contractor or Subcontractors, as the case may be, to obtain.
10.5	Unless otherwise specified in the Contract or agreed upon by the Employer and the Contractor, the Employer shall provide sufficient, properly qualified operating and maintenance personnel; shall supply and make available all raw materials, utilities, lubricants, chemicals, catalysts, other materials and facilities ; and shall perform all work and services of whatsoever nature, to enable the Contractor to properly carry out Pre-commissioning, Commissioning and Guarantee Tests, all in accordance with the provisions of Appendix 6 (Scope of Works and Supply by the Employer) to the Contract Agreement at or before the time specified in the program furnished by the Contractor under GCC Sub-Clause 18.2 (Program of Performance) hereof and in the manner thereupon specified or as otherwise agreed upon by the Employer and the Contractor.
10.6	The Employer shall be responsible for the continued operation of the Facilities after Completion, in accordance with GCC Sub-Clause 24.8, and shall be responsible for facilitating the Guarantee Test(s) for the Facilities, in accordance with GCC Sub-Clause 25.2.

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10.7	All costs and expenses involved in the performance of the obligations under this GCC Clause 10 shall be the responsibility of the Employer, save those to be incurred by the Contractor with respect to the performance of Guarantee Tests, in accordance with GCC Sub-Clause 25.2.
	<b>C. Payment</b>
<b>11. Contract Price</b>	
11.1	The Contract Price shall be as specified in Article 2 (Contract Price and Terms of Payment) of the Form of Contract Agreement.
11.2	The Contract Price shall be adjusted in accordance with provisions of Appendix-2 (Price Adjustment) to the Contract Agreement.
11.3	Subject to GCC Sub-Clauses 9.2, 10.1 and 35 (Unforeseen Conditions) hereof, the Contractor shall be deemed to have satisfied itself as to the correctness and sufficiency of the Contract Price, which shall, except as otherwise provided for in the Contract, cover all its obligations under the Contract.
<b>12. Terms of Payment</b>	
12.1	The Contract Price shall be paid as specified in Appendix 1 (Terms and Procedures of Payment) to the Contract Agreement. The procedures to be followed in making application for and processing payments shall be those outlined in the same Appendix 1.
12.2	No payment made by the Employer herein shall be deemed to constitute acceptance by the Employer of the Facilities or any part(s) thereof.
12.3	The currency or currencies in which payments are made to the Contractor under this Contract shall be specified in Appendix 1 (Terms and Procedures of Payment) to the Contract Agreement, subject to the general principle that payments will be made in the currency or currencies in which the Contract Price has been stated in the Contractor's bid.
<b>13. Securities</b>	
13.1	<b>Issuance of Securities</b>  The Contractor shall provide the securities specified below in favor of the Employer at the times, and in the amount, manner and form specified below.
13.2	<b>Advance Payment Security</b>
13.2.1	The Contractor shall, within twenty-eight (28) days of the Notification of Award of Contract, provide a security in an amount equal to the advance payment for supply of Plant & Equipment and 110% of the advance amount for Installation Services and Civil & Allied Works calculated in accordance with Appendix 1 (Terms and Procedures of Payment) to the Contract Agreement, and in the currency or currencies of the Contract, with an initial validity of up to ninety (90) days beyond the schedule date of Completion of the last facility covered under the package in accordance with GCC Clause 24. However, in case of delay in completion of the facilities under the package, the validity of this
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	<p>security shall be extended by the period of such delay. The advance payment security shall also cover the amount of GST as applicable on the advance payment to be paid to the contractor.</p> <p>13.2.2 The security shall be in the form of an unconditional bank guarantee as per the proforma provided in Section VII (Forms and Procedures) - Form of Advance Payment Security. The Advance payment Security shall be reduced prorata every three (3) months after First Running Account Bill/Stage Payment under the Contract based on the value of the respective equipment/facilities received and applicable GST. The cumulative amount of reduction at any point of time shall not exceed seventy five percent (75%) of the advance and the amount of GST paid on the advance amount corresponding to cumulative value of the respective equipment/Facilities supplied and received as per certificate issued by the Project Manager. The balance shall be released after ninety (90) days beyond Completion of those Facilities. It should be clearly understood that reduction in the value of security for advance shall not in any way dilute the Contractor's responsibility and liabilities under the Contract including in respect of the Facilities for which the reduction in the value of security is allowed.</p> <p>13.3 <b>Performance Security</b></p> <p>13.3.1 The Contractor shall, within twenty-eight (28) days of the Notification of Award, provide securities for the due performance of the Contract for ten percent (10%) of the Contract Price of all the Contracts, with an initial validity upto ninety (90) days beyond the end of scheduled Defect Liability Period of the last equipment covered under the package.</p> <p>If the Employer accepts to enter into 'Second Contract' and/or 'Third Contract' with the Assignee of a foreign Contractor, pursuant to GCC Sub-Clause 3.6, the said Assignee, in addition to the Contract Performance Securities to be provided by the foreign contractor for ten percent (10%) of the value of all the Contracts i.e. First Contract, Second Contract and Third Contract, shall provide within twenty eight (28) days of the Notification of Award, separate Contract Performance Security(ies) equivalent to ten percent (10%) of the value of Contract(s) entered into with the Assignee, for the due performance of Contract, with an initial validity upto ninety (90) days beyond the end of Scheduled Defect Liability period of the last equipment covered under the package. <b>(Applicable in case of ICB Tender only)</b></p> <p>However, in case of delay in completion of the defect liability period, the validity of all the contract performance securities shall be extended by the period of such delay.</p> <p>13.3.2 The performance security shall be denominated in the currency or currencies of the Contract, or in a freely convertible currency acceptable to the Employer, and shall be in the form of unconditional bank guarantee provided in Section-VII (Forms</p>
CPG-1	<div data-bbox="771 1906 969 1934" data-label="Page-Footer">SECTION - IV (GCC)</div> <div data-bbox="1179 1906 1325 1934" data-label="Page-Footer">Page 26 of 84.</div>

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	<p>and Procedures)-Form of Performance Security of the bidding documents.</p> <p>13.3.3 Unless otherwise stipulated in SCC, the security shall be reduced pro rata to the Contract Price of a part of the Facilities for which a separate time for Completion is provided, twenty one (21) months after Completion of the Facilities or where relevant part thereof, or fifteen (15) months after Operational Acceptance of the Facilities (or the relevant part thereof), whichever occurs first; provided, however, that if the Defects Liability Period has been extended on any part of the Facilities pursuant to GCC Sub-Clause 27.8 hereof, the Contractor shall issue an additional security in an amount proportionate to the Contract Price of that part. The security shall be returned to the Contractor immediately after its expiration, provided, however, that if the Contractor, pursuant to GCC Sub-Clause 27.10, is liable for an extended warranty obligation, the performance security shall be extended for the period and up to the amount agreed upon or as specified in the SCC.</p> <p>13.4 Security for Joint Deed of Undertaking</p> <p>In case Deed(s) of Joint Undertaking by the Contractor along with his Collaborator(s) / Associate(s) form part of the Contract, then, in addition to the Contract performance securities furnished by the Contractor, the Collaborator(s) / Associate(s) shall furnish, within twenty eight (28) days of the Notification of Award, separate unconditional Bank Guarantee(s) towards faithful performance of the Deed(s) of Joint Undertaking for amount(s) specified in relevant Item of Bid Data Sheets and with validity till such period as specified in the corresponding format for Deed of Joint Undertaking. However, in case of delay in completion of defect liability period, the validity of Bank Guarantee(s) submitted towards faithful performance of Deed(s) of Joint Undertaking shall be extended by such period of delay.</p> <p>The Bank Guarantee(s) shall be denominated in the currency or currencies of Contract and shall be as per the proforma provided in Section-VII (Forms and Procedures) - Form of Bank Guarantee to be furnished by Associate(s) / Collaborator(s).</p> <p>13.5 The Bank Guarantees submitted towards Advance Payment Security, Contract Performance Security and Security in compliance to the Deed of Joint Undertaking (if applicable) shall be essentially from any of the Banks listed at <b>Annexure-I</b> to Section-V (Special Conditions of Contract) of the bidding documents.</p> <p>In case of guarantees issued by branches outside India for foreign banks, the bank guarantees shall be routed through the correspondent Bank in India for due verification of signatures of the executant. <b>(Applicable in case of ICB Tender only)</b></p> <p>The bank guarantee submitted from within India towards Advance Payment Security, Contract Performance Security and Security for Deed of Joint Undertaking (if applicable) shall be issued on a</p>
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	<p>stamp paper of appropriate value as per stamp act prevailing in the State of the issuing Bank in India or the state of U.P. in India or the State from where the BG shall be operated, whichever is higher.</p> <p>13.6 Where a BG issued by a Bank outside India also needs to bear Stamp Duty of appropriate value applicable to the place in NTPC where BG is to be submitted, the BG will be adjudicated from Collector of Stamps, within 3 months of arrival of BG in India and the expenses incurred in this regard shall be borne by the Contractor. <b>(Applicable in case of ICB Tender only)</b></p>
<p><b>14. Taxes and Duties</b></p>	<p>14.1 Except as otherwise specifically provided in the Contract, the Contractor shall bear and pay all taxes, duties, levies and charges assessed on the Contractor, its Sub-contractor or their employees by all municipal, state or national government authorities in connection with the Facilities in and outside of the country where the Site is located.</p> <p>14.2 Notwithstanding GCC Sub-Clauses 14.1 above, the Employer shall bear and promptly pay/reimburse all Customs and Import duties, if imposed on the Plant and Equipment including Mandatory Spares supplied from abroad and specified in relevant Price Schedule (and on Recommended Spare Parts to be supplied from abroad and specified in relevant Price Schedule, when awarded) and that are to be incorporated into the Facilities, by the law of the country where the Site is located. However, if the Plant and Equipment are shipped in Shipper's containers, then the custom duty levied on the cost of empty containers shall be borne and paid/reimbursed by the Contractor. <b>(Applicable in case of ICB Tender only)</b></p> <p>Notwithstanding GCC Sub-Clauses 14.1 above, the Employer shall also bear and pay/reimburse to the Contractor Excise Duty, Sales Tax (but not the surcharge in lieu of Sales Tax), and Octroi (if applicable) in respect of both direct transactions between the Employer and Contractor and on Bought out items (to be dispatched directly from the sub-vendor's works to Project site), if imposed on the Plant and Equipment including Mandatory Spares supplied from within the Employer's country and specified in relevant Price Schedule (and also on locally supplied Recommended Spare Parts quoted in relevant Price Schedule, when awarded) to be incorporated in the Facilities, by the law of country where the site is located.</p> <p>For the above purpose, the Ex-works price if quoted in foreign currency and so incorporated in the contract, shall be converted to Indian Rupees as per the TT buying exchange rates established by State Bank of India prevailing on the actual date of Ex-works (India) despatch. <b>(Applicable in case of ICB Tender only)</b></p> <p>Employer will issue the requisite sales tax declaration form(s) in order to get the benefit of any concession in the rate of sales tax. Further, in case of all components, equipment and materials identified by the contractor and NTPC to be despatched directly from the sub-vendor's work to NTPC site in a state different from the state wherein sub-vendor's works are located, the contractor will effect sale in transit. For effecting the sale in transit, the contractor shall ensure that his sub-vendor raises invoices in</p>
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	<p>the contractor's name (and not in the name of NTPC) and obtains GR/LR/RR in the name of Contractor (and not in the name of NTPC). The Contractor shall further ensure that he endorses the GR/LR/RR in the name of NTPC during transit of the equipment before the delivery of equipment is taken by NTPC.</p> <p>All taxes, duties and levies on Works Contract, if any, shall be to the contractor's account and no separate claim in this regard will be entertained by the Employer.</p> <p>All taxes, duties and levies in respect of local transportation &amp; insurance, other local costs incidental to delivery of plant &amp; equipment including mandatory spares, civil construction works and erection and commissioning and also taxes, duties &amp; levies including entry tax as may be applicable on the materials used for civil construction works and erection &amp; commissioning shall be to the contractor's account and no separate claim in this regard will be entertained by the Employer.</p> <p>Incidence of Service Tax &amp; Cess on any component of the bid price shall be to the contractor's account and included in the Contract Price as applicable on seven (7) days prior to the deadline set for price bid submission. However, financial implication if any on account of any change in the rate of service tax as applicable for direct transactions between the Employer and the contractor shall be to Employer's account in line with the provision of GCC clause 14.4.</p> <p><b>Entry Tax</b></p> <p>Entry Tax on the Plant and Equipment including Mandatory Spares specified in relevant Price Schedules shall be paid directly by the Employer to the concerned State Tax Authorities and the Entry Tax as per rates applicable as on seven days prior to the deadline set for price bid submission shall be deducted from the payments due to the Contractor.</p> <p>14.3 If any tax exemptions, reductions, allowances or privileges are available to the Contractor in the country where the Site is located, the Employer shall use its best endeavours to enable the Contractor to benefit from any such tax savings to the maximum allowable extent.</p> <p>14.4 For the purpose of the Contract, it is agreed that the Contract Price specified in Article 2 (Contract Price and Terms of Payment) of the Contract Agreement is based on the taxes, duties, levies and charges prevailing on seven (7) days prior to the deadline set for price bid submission in the country where the Site is located (hereinafter called "Tax" in this GCC Sub-Clause 14.4). If any rates of Tax are increased or decreased, a new Tax is introduced, an existing Tax is abolished, or any change in interpretation or application of any Tax occurs in the course of the performance of Contract, which was or will be assessed on the Contractor in connection with performance of the Contract, an equitable adjustment of the Contract Price shall be made to fully take into account any such change by addition to the Contract Price or deduction therefrom, as the case may be, in accordance with GCC Clause 36 (Change in Laws and Regulations) hereof. However, these adjustments would be restricted to items in respect of direct transactions between the Employer and Contractor and Bought out items (dispatched directly from sub-vendor's works to Site). These adjustments shall not be applicable on procurement of raw materials, intermediary components etc. by the Contractor.</p>
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	<p>Notwithstanding the above in case of any upward variation in rates of Entry Tax between those applicable seven days prior to the deadline set for price bid submission and the date of entry of goods and payment of Entry Tax by Owner, the deduction from Contractor's bills will be limited to the amount being worked out at the rates of Entry Tax as applicable seven days prior to the deadline set for price bid submission. In case of downward variation, the contract price will be adjusted for such downward variation in rates of Entry Tax between those applicable seven days prior to the deadline set for price bid submission and the date of entry of goods and payment of Entry Tax by Owner.</p> <p>14.5 In case the CIF price of mandatory spares and / or of recommended spares exceeds the exemption limit as provided under the extant Policy/Notifications of GOI, all applicable additional taxes &amp; duties (if any) on the excess price shall be to the account of Employer. <b>(Applicable in case of ICB Tender only).</b></p> <p>If the Employer orders any spare at a later date as per GCC CI 7.3, all applicable additional taxes &amp; duties, If any, not included in the original price shall be to the account of Employer.</p> <p>14.6 <b>Income Tax (Applicable in case of ICB Tender only):</b> As per Indian Income Tax Act &amp; Rules, Employer is required to deduct Income Tax at source from all the payments to be made to Non resident/Foreign Contractor. For this purpose, the Contractor shall be required to either furnish</p> <ul style="list-style-type: none"> <li>(i) the certificate from Indian Tax Authority or</li> <li>(ii) Ruling from "the Authority for Advance Ruling (AAR)" determining the applicable rate of Income tax in India before release of first payment.</li> </ul> <p>The Contractor will be required to submit PAN details to the Project Manager before the submission of the first bill.</p> <p><b>D. Intellectual Property</b></p>
<p>15. <b>Copyright</b></p>	<p>15.1 The copyright in all drawings, documents and other materials containing data and information furnished to the Employer by the Contractor herein shall remain vested in the Contractor or, if they are furnished to the Employer directly or through the Contractor by any third party, including suppliers of materials, the copyright in such materials shall remain vested in such third party. The Employer shall however be free to reproduce all drawings, documents and other material furnished to the Employer for the purpose of the contract including, if required, for operation and maintenance of the facilities.</p>
<p>16. <b>Confidential Information</b></p>	<p>16.1 The Employer and the Contractor shall keep confidential and shall not, without the written consent of the other party hereto, divulge to any third party any documents, data or other information furnished directly or indirectly by the other party hereto in connection with the Contract, whether such information has been furnished prior to, during or following termination of the Contract. Notwithstanding the above, the Contractor</p>
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	<p>may furnish to its Subcontractor(s) such documents, data and other information it receives from the Employer to the extent required for the Subcontractor(s) to perform its work under the Contract, in which event the Contractor shall obtain from such Subcontractor(s) an undertaking of confidentiality similar to that imposed on the Contractor under this GCC Clause 16.</p> <p>16.2 The Employer shall not use such documents, data and other information received from the Contractor for any purpose other than the operation and maintenance of the Facilities. Similarly, the Contractor shall not use such documents, data and other information received from the Employer for any purpose other than the design, procurement of Plant and Equipment, construction or such other work and services as are required for the performance of the Contract.</p> <p>16.3 The obligation of a party under GCC Sub-Clauses 16.1 and 16.2 above, however, shall not apply to that information which</p> <ul style="list-style-type: none"> <li>(a) now or hereafter enters the public domain through no fault of that party</li> <li>(b) can be proven to have been possessed by that party at the time of disclosure and which was not previously obtained, directly or indirectly, from the other party hereto</li> <li>(c) otherwise lawfully becomes available to that party from a third party that has no obligation of confidentiality.</li> </ul> <p>16.4 The above provisions of this GCC Clause 16 shall not in any way modify any undertaking of confidentiality given by either of the parties hereto prior to the date of the Contract in respect of the Facilities or any part thereof.</p> <p>16.5 The provisions of this GCC Clause 16 shall survive termination, for whatever reason, of the Contract.</p>
	<b>E. Work Execution</b>
<b>17. Representatives</b>	
17.1	<p><b>Project Manager</b></p> <p>If the Project Manager is not named in the Contract, then within fourteen (14) days of the Effective Date, the Employer shall appoint and notify the Contractor in writing of the name of the Project Manager. The Employer may from time to time appoint some other person as the Project Manager in place of the person previously so appointed, and shall give a notice of the name of such other person to the Contractor without delay. The Employer shall take reasonable care to see that no such appointment is made at such a time or in such a manner as to impede the progress of work on the Facilities. The Project Manager shall represent and act for the Employer at all times during the currency of the Contract. All notices, instructions, orders, certificates, approvals and all other communications under the Contract shall be given by the Project Manager, except as herein otherwise provided.</p>

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	<p>All notices, instructions, information and other communications given by the Contractor to the Employer under the Contract shall be given to the Project Manager, except as herein otherwise provided.</p> <p><b>17.2 Contractor's Representative &amp; Construction Manager</b></p> <p><b>17.2.1</b> The Contractor shall appoint the Contractor's Representative within fourteen (14) days of the Effective Date or before start of work whichever is earlier and shall request the Employer in writing to approve the person so appointed.</p> <p><b>17.2.1.1</b> The Contractor's representative shall be a regular Employee/ Partner/ Director only and the Contractor shall be required to submit a Power of Attorney in original in favour of its representative. Notarized photocopy of the Power of Attorney shall be acceptable only if the Power of Attorney has been registered by the Contractor. The Employer may verify the photocopy of the Power of Attorney with the Original and the Contractor shall be required to produce the original Power of Attorney for verification, if required by the Employer. The relation of the Contractor's representative with the contractor such as Partner/ Employee etc. should be clearly brought out in the Power of Attorney. The Contractor would be required to submit a documentary proof of the relation of the Contractor's representative with the contractor in the form of self-attested copy of any of the following documents:</p> <ul style="list-style-type: none"> <li>i. Previous financial year's Form 16 as available at TRACES site of Income tax department, if the Contractor's representative is an employee of contractor or his Appointment Letter/Salary Slip/other documentary evidence (only in case of recent appointment or where Form 16 details are not uploaded at TRACES). Further, the Contractor shall submit the copy of Form 16 as available through TRACES site for every subsequent year also in respect of the Contractor's representative till the period of authorization.</li> <li>ii. Article of Association / Registered Partnership Deed if the Contractor's representative is a partner or stake holder in Company.</li> </ul> <p>In case, the Contractor is not able to submit any of the documentary proofs as mentioned above at para (i) &amp; (ii), he would be required to submit an affidavit stating the relationship between the Contractor's representative and the Contractor.</p> <p><b>17.2.1.2</b> In case, the Contractor's representative is also doing some other Contract(s)/Work(s) as nominee of the same contractor, the Contractor shall give a declaration citing list of all works where the Contractor's representative is the nominee.</p> <p><b>17.2.1.3</b> If the Employer objects to the appointment giving the reason therefore, then the Contractor shall appoint a replacement within fourteen (14) days of such objection, and the foregoing provisions of this GCC Sub-Clause 17.2.1 shall apply thereto.</p>
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	<p>17.2.2 The Contractor's Representative shall represent and act for the Contractor at all times during the currency of the Contract and shall give to the Project Manager all the Contractor's notices, instructions, information and all other communications under the Contract.</p> <p>All notices, instructions, information and all other communications given by the Employer or the Project Manager to the Contractor under the Contract shall be given to the Contractor's Representative or, in its absence, its deputy, except as herein otherwise provided.</p> <p>The Contractor shall not revoke the appointment of the Contractor's Representative without the Employer's prior written consent, which shall not be unreasonably withheld. If the Employer consents thereto, the Contractor shall appoint some other person as the Contractor's Representative, pursuant to the procedure set out in GCC Sub-Clause 17.2.1.</p> <p>17.2.3 The Contractor's Representative may, subject to the approval of the Employer (which shall not be unreasonably withheld), at any time delegate to any person any of the powers, functions and authorities vested in him or her. Any such delegation may be revoked at any time. Any such delegation or revocation shall be subject to a prior notice signed by the Contractor's Representative, and shall specify the powers, functions and authorities thereby delegated or revoked. No such delegation or revocation shall take effect unless and until a copy thereof has been delivered to the Employer and the Project Manager.</p> <p>Any act or exercise by any person of powers, functions and authorities so delegated to him or her in accordance with this GCC Sub-Clause 17.2.3 shall be deemed to be an act or exercise by the Contractor's Representative.</p> <p>17.2.3.1 Notwithstanding anything stated in GCC Sub-clause 17.1 and 17.2.1 above, for the purpose of execution of contract, the Employer and the Contractor shall finalise and agree to a Contract Co-ordination Procedure and all the communication under the Contract shall be in accordance with such Contract Co-ordination Procedure.</p> <p>17.2.4 From the commencement of installation of the Facilities at the Site until Operational Acceptance, the Contractor's Representative shall appoint a suitable person as the construction manager (hereinafter referred to as "the Construction Manager"). The Construction Manager shall supervise all work done at the Site by the Contractor and shall be present at the Site throughout normal working hours except when on leave, sick or absent for reasons connected with the proper performance of the Contract. Whenever the Construction Manager is absent from the Site, a suitable person shall be appointed to act as his or her deputy.</p> <p>17.2.5 The Employer may by notice to the Contractor object to any representative or person employed by the Contractor in the execution of the Contract who, in the reasonable opinion of the Employer, may behave inappropriately, may be incompetent or negligent, or may commit a serious breach of the Site regulations</p>
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	<p>provided under GCC Sub-Clause 22.3. The Employer shall provide evidence of the same, whereupon the Contractor shall remove such person from the Facilities.</p> <p>17.2.6 If any representative or person employed by the Contractor is removed in accordance with GCC Sub-Clause 17.2.5, the Contractor shall, where required, promptly appoint a replacement.</p> <p>17.2.7 In case any of the information/declaration/undertaking provided by Contractor/Contractor's representative is found to be false and/or the Contractor/Contractor's representative suppresses any relevant information at any stage, the Contractor will be liable for actions in terms of Employer's Banning policy.</p>
<p><b>18. Work Program</b></p>	<p><b>18.1 Contractor's Organization</b></p> <p>The Contractor shall supply to the Employer and the Project Manager a chart showing the proposed organization to be established by the Contractor for carrying out work on the Facilities. The chart shall include the identities of the key personnel together with the curricula vitae of such key personnel to be employed within twenty-one (21) days of the Effective Date. The Contractor shall promptly inform the Employer and the Project Manager in writing of any revision or alteration of such an organization chart.</p> <p><b>18.2 Program of Performance</b></p> <p>Within twenty-eight (28) days after the date of notification of award of Contract, the Contractor shall prepare and submit to the Project Manager a detailed program of performance of the Contract, made in the form of PERT Network and showing the sequence in which it proposes to design, manufacture, transport, assemble, install and precommission the Facilities, as well as the date by which the Contractor reasonably requires that the Employer shall have fulfilled its obligations under the Contract so as to enable the Contractor to execute the Contract in accordance with the program and to achieve Completion and Acceptance of the Facilities in accordance with the Contract. The program so submitted by the Contractor shall accord with the Time Schedule included in Appendix 4 (Time Schedule) to the Contract Agreement and any other dates and periods specified in the Contract. The Contractor shall update and revise the program as and when appropriate or when required by the Project Manager, but without modification in the Times for Completion given in the SCC and any extension granted in accordance with GCC Clause 40, and shall submit all such revisions to the Project Manager.</p> <p><b>18.3 Progress Report</b></p> <p>The Contractor shall monitor progress of all the activities specified in the program referred to in GCC Sub-Clause 18.2 (Program of Performance) above, and supply a progress report to the Project Manager every month.</p> <p>The progress report shall be in a form acceptable to the Project Manager and shall also indicate: (a) percentage completion achieved compared</p>
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	<p>with the planned percentage completion for each activity; and (b) where any activity is behind the program, giving comments and likely consequences and stating the corrective action being taken.</p> <p><b>18.4 Progress of Performance</b></p> <p>If at any time the Contractor's actual progress falls behind the program referred to in GCC Sub-Clause 18.2 (Program of Performance), or it becomes apparent that it will so fall behind, the Contractor shall, at the request of the Employer or the Project Manager, prepare and submit to the Project Manager a revised program, taking into account the prevailing circumstances, and shall notify the Project Manager of the steps being taken to expedite progress so as to attain Completion of the Facilities within the Time for Completion under GCC Sub-Clause 8.2 (Time for Commencement and Completion), any extension thereof entitled under GCC Sub-Clause 40.1 (Extension of Time for Completion), or any extended period as may otherwise be agreed upon between the Employer and the Contractor.</p> <p><b>18.5 Work Procedures</b></p> <p>The Contract shall be executed in accordance with the Contract Documents and the procedures given in the section on Forms and Procedures of the Contract Documents.</p> <p>If agreed between the Employer and the Contractor, the Contractor may execute the Contract in accordance with its own standard project execution plans and procedures to the extent that they do not conflict with the provisions contained in the Contract.</p> <p><b>18.6 Maintenance of Records of Weekly Progress Review Meetings at Site</b></p> <p>The Contractor shall be required to attend all weekly site progress review meetings organized by the 'Project Manager' or his authorised representative. The deliberations in the meetings shall inter alia include the weekly program, progress of work (including details of manpower tools and plants deployed by the contractor vis-à-vis agreed schedule), inputs to be provided by Employer, delays, if any and recovery program, specific hindrances to work and work instructions by Employer. The minutes of the weekly meetings shall be recorded in triplicate in a numbered register available with the Project Manager or his authorized representative. These recordings shall be jointly signed by the Project Manager or his authorized representative and the Contractor and one copy of the signed records shall be handed over to the Contractor".</p>
<p><b>19. Subcontracting</b></p> <p><b>19.1</b></p>	<p>Appendix 5 (List of Approved Subcontractors) to the Contract Agreement specifies major items of supply or services and a list of approved Subcontractors against each item, including vendors. Insofar as no Subcontractors are listed against any such item, the Contractor shall prepare a list of Subcontractors for such item for inclusion in such list. The Contractor may from time to time propose any addition to or deletion from any such list. The Contractor shall submit any such list or any modification thereto to the Employer for its approval in sufficient time so as not to impede the progress of work on the Facilities. Such approval by the</p>
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	<p>Employer for any of the Subcontractors shall not relieve the Contractor from any of its obligations, duties or responsibilities under the Contract.</p> <p>19.2 The Contractor shall select and employ its Subcontractors for such major items from those listed in the lists referred to in GCC Sub-Clause 19.1.</p> <p>19.3 For items or parts of the Facilities not specified in Appendix 5 (List of Approved Subcontractors) to the Contract Agreement, the Contractor may employ such Subcontractors as it may select, at its discretion.</p>
20. <b>Design And Engineering</b>	<p>20.1 <b>Specifications and Drawings</b></p> <p>20.1.1 The Contractor shall execute the basic and detailed design and the engineering work in compliance with the provisions of the Contract, or where not so specified, in accordance with good engineering practice.</p> <p>The Contractor shall be responsible for any discrepancies, errors or omissions in the specifications, drawings and other technical documents that it has prepared, whether such specifications, drawings and other documents have been approved by the Project Manager or not, provided that such discrepancies, errors or omissions are not because of inaccurate information furnished in writing to the Contractor by or on behalf of the Employer.</p> <p>20.1.2 The Contractor shall be entitled to disclaim responsibility for any design, data, drawing, specification or other document, or any modification thereof provided or designated by or on behalf of the Employer, by giving a notice of such disclaimer to the Project Manager.</p> <p>20.2 <b>Codes and Standards</b></p> <p>Wherever references are made in the Contract to codes and standards in accordance with which the Contract shall be executed, the edition or the revised version of such codes and standards current at the date twenty-eight (28) days prior to deadline set for price bid submission shall apply unless otherwise specified. During Contract execution, any changes in such codes and standards shall be applied after approval by the Employer and shall be treated in accordance with GCC Clause 39 (Changes Originating from Contractor).</p> <p>20.3 <b>Approval/Review of Technical Documents by Project Manager</b></p> <p>20.3.1 The Contractor shall prepare (or cause its Subcontractors to prepare) and furnish to the Project Manager the documents listed in Appendix 7 (List of Documents for Approval or Review) to the Contract Agreement for its approval or review as specified and as in accordance with the requirements of GCC Sub-Clause 18.2 (Program of Performance).</p>

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	<p>Any part of the Facilities covered by or related to the documents to be approved by the Project Manager shall be executed only after the Project Manager's approval thereof.</p> <p>GCC Sub-Clauses 20.3.2 through 20.3.7 shall apply to those documents requiring the Project Manager's approval, but not to those furnished to the Project Manager for its review only.</p> <p>20.3.2 Within twenty one (21) days after receipt by the Project Manager of any document requiring the Project Manager's approval in accordance with GCC Sub-Clause 20.3.1, the Project Manager shall either return one copy thereof to the Contractor with its approval endorsed thereon or shall notify the Contractor in writing of its disapproval thereof and the reasons therefor and the modifications that the Project Manager proposes.</p> <p>20.3.3 The Project Manager shall not disapprove any document, except on the grounds that the document does not comply with some specified provision of the Contract or that it is contrary to good engineering practice.</p> <p>20.3.4 If the Project Manager disapproves the document, the Contractor shall modify the document and resubmit it for the Project Manager's approval in accordance with GCC Sub-Clause 20.3.2. If the Project Manager approves the document subject to modification(s), the Contractor shall make the required modification(s), and upon resubmission with the required modifications the document shall be deemed to have been approved.</p> <p>The procedure for submission of the documents by the Contractor and their approval by the Project Manager shall be discussed and finalised with the Contractor.</p> <p>20.3.5 If any dispute or difference occurs between the Employer and the Contractor in connection with or arising out of the disapproval by the Project Manager of any document and/or any modification(s) thereto that cannot be settled between the parties within a reasonable period, then such dispute or difference may be referred to Expert Settlement Council (ESC) for determination in accordance with GCC Sub-Clause 6.2 hereof. If such dispute or difference is referred to ESC, the Project Manager shall give instructions as to whether and if so, how, performance of the Contract is to proceed. The Contractor shall proceed with the Contract in accordance with the Project Manager's instructions, provided that if the ESC upholds the Contractor's view on the dispute and if the Employer has not given notice under GCC Sub-Clause 6.3.1 hereof, then the Contractor shall be reimbursed by the Employer for any additional costs incurred by reason of such instructions and shall be relieved of such responsibility or liability in connection with the dispute and the execution of the instructions as the ESC shall decide, and the Time for Completion shall be extended accordingly.</p> <p>20.3.6 The Project Manager's approval, with or without modification of the document furnished by the Contractor, shall not relieve the Contractor of any responsibility or liability imposed upon it by any</p>	
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	<p>provisions of the Contract except to the extent that any subsequent failure results from modifications required by the Project Manager.</p> <p>20.3.7 The Contractor shall not depart from any approved document unless the Contractor has first submitted to the Project Manager an amended document and obtained the Project Manager's approval thereof, pursuant to the provisions of this GCC Sub-Clause 20.3.</p> <p>If the Project Manager requests any change in any already approved document and/or in any document based thereon, the provisions of GCC Clause 39 (Change in the Facilities) shall apply to such request.</p>
<p><b>21. Procurement</b></p>	<p><b>21.1 Plant and Equipment</b></p> <p>Subject to GCC Sub-Clause 14.2, the Contractor shall manufacture or procure and transport all the Plant and Equipment in an expeditious and orderly manner to the Site.</p> <p><b>21.2 Employer-Supplied Plant, Equipment, and Materials</b></p> <p>If Appendix 6 (Scope of Works and Supply by the Employer) to the Contract Agreement provides that the Employer shall furnish any specific items of machinery, equipment or materials to the Contractor, the following provisions shall apply:</p> <p>21.2.1 The Employer shall, at its own risk and expense, transport each item to the place on or near the Site as agreed upon by the parties and make such item available to the Contractor at the time specified in the program furnished by the Contractor, pursuant to GCC Sub-Clause 18.2 (Program of Performance), unless otherwise mutually agreed.</p> <p>21.2.2 Upon receipt of such item, the Contractor shall inspect the same visually and notify the Project Manager of any detected shortage, defect or default. The Employer shall immediately remedy any shortage, defect or default, or the Contractor shall, if practicable and possible, at the request of the Employer, remedy such shortage, defect or default at the Employer's cost and expense. After inspection, such item shall fall under the care, custody and control of the Contractor. The provision of this GCC Sub-Clause 21.2.2 shall apply to any item supplied to remedy any such shortage or defect or to substitute for any defective item, or shall apply to defective items that have been repaired.</p> <p>21.2.3 The foregoing responsibilities of the Contractor and its obligations of care, custody and control shall not relieve the Employer of liability for any undetected shortage, defect or default, nor place the Contractor under any liability for any such shortage, defect or default whether under GCC Clause 27 (Defect Liability) or under any other provision of Contract.</p>

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	<p data-bbox="456 216 735 243"><b>21.3 Transportation</b></p> <p data-bbox="557 275 1367 386">21.3.1 The Contractor shall at its own risk and expense transport all the Plant and Equipment and the Contractor's Equipment to the Site by the mode of transport that the Contractor judges most suitable under all the circumstances.</p> <p data-bbox="656 420 854 447"><b>Packing Material</b></p> <p data-bbox="656 478 1367 735">The Contractor shall ensure that all the plant and equipment are suitably packed and protected to prevent damage or deterioration during its transportation to site, handling and storage at site till the time of its installation. The ownership of all such packing material (except empty shipper's containers on which the customs duty has been paid by the Contractor pursuant to GCC Clause 14.2) shall stand transferred to the Employer upon dispatch of the plant and equipment and endorsement of dispatch documents in favour of the Employer.</p> <p data-bbox="557 768 1367 879">21.3.2 Unless otherwise provided in the Contract, the Contractor shall be entitled to select any safe mode of transport operated by any person to carry the Plant and Equipment and the Contractor's Equipment.</p> <p data-bbox="557 913 1367 1169">21.3.3 Upon despatch of each shipment of the Plant and Equipment and the Contractor's Equipment, the Contractor shall notify the Employer by telex, cable, facsimile or Electronic Data Interchange (EDI) of the description of the Plant and Equipment and of the Contractor's Equipment, the point and means of dispatch, and the estimated time and point of arrival in the country where the Site is located, if applicable, and at the Site. The Contractor shall furnish the Employer with relevant shipping documents to be agreed upon between the parties.</p> <p data-bbox="557 1203 1367 1486">21.3.4 The Contractor shall be responsible for obtaining, if necessary, approvals from the authorities for transportation of the Plant and Equipment and the Contractor's Equipment to the Site. The Employer shall use its best endeavors in a timely and expeditious manner to assist the Contractor in obtaining such approvals, if requested by the Contractor. The Contractor shall indemnify and hold harmless the Employer from and against any claim for damage to roads, bridges or any other traffic facilities that may be caused by the transport of the Plant and Equipment and the Contractor's Equipment to the Site.</p> <p data-bbox="456 1520 1263 1547"><b>21.4 Customs Clearance (Applicable in case of ICB Tender only)</b></p> <p data-bbox="557 1581 1367 1837">The Contractor shall, at its own expense, handle all imported Plant and Equipment and Contractor's Equipment at the point(s) of import and shall handle any formalities for customs clearance, subject to the Employer's obligations under GCC Sub-Clause 14.2, provided that if applicable laws or regulations require any application or act to be made by or in the name of the Employer, the Employer shall take all necessary steps to comply with such laws or regulations. In the event of delays in customs clearance due to fault of the Employer, the Contractor shall be entitled to an extension in the Time for Completion, pursuant to GCC Clause 40.</p>
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<p><b>22. Installation</b></p> <p><b>22.1 Setting Out/Supervision/Labour</b></p> <p><b>22.1.1 Bench Mark:</b> The Contractor shall be responsible for the true and proper setting-out of the Facilities in relation to bench marks, reference marks and lines provided to it in writing by or on behalf of the Employer.</p> <p>If, at any time during the progress of installation of the Facilities, any error shall appear in the position, level or alignment of the Facilities, the Contractor shall forthwith notify the Project Manager of such error and, at its own expense, immediately rectify such error to the reasonable satisfaction of the Project Manager. If such error is based on incorrect data provided in writing by or on behalf of the Employer, the expense of rectifying the same shall be borne by the Employer.</p> <p><b>22.1.2 Contractor's Supervision:</b> The Contractor shall give or provide all necessary superintendence during the installation of the Facilities, and the Construction Manager or its deputy shall be constantly on the Site to provide full-time superintendence of the installation. The Contractor shall provide and employ only technical personnel who are skilled and experienced in their respective callings and supervisory staff who are competent to adequately supervise the work at hand.</p> <p><b>22.1.3 Labour:</b></p> <p>(a) The Contractor shall provide and employ on the Site in the installation of the Facilities such skilled, semi-skilled and unskilled labour as is necessary for the proper and timely execution of the Contract. The Contractor shall preferably engage skilled/semiskilled/unskilled workers from amongst the land oustees of the Project.</p> <p>(b) Unless otherwise provided in the Contract, the Contractor shall be responsible for the recruitment, transportation, accommodation and catering of all labour, local or expatriate, required for the execution of the Contract and for all payments in connection therewith.</p> <p>(c) The Contractor shall be responsible for obtaining all necessary permit(s) and/or visa(s) from the appropriate authorities for the entry of all labour and personnel to be employed on the Site into the country where the Site is located.</p> <p>(d) The Contractor shall at its own expense provide the means of repatriation to all of its and its Subcontractor's personnel employed on the Contract at the Site to their various home countries. It shall also provide suitable temporary maintenance of all such persons from the cessation of their employment on the Contract to the date programmed for their departure. In the event that the Contractor defaults</p>	
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	<p>in providing such means of transportation and temporary maintenance, the Employer may provide the same to such personnel and recover the cost of doing so from the Contractor.</p> <p>(e) The Contractor shall at all times during the progress of the Contract use its best endeavor to prevent any unlawful, riotous or disorderly conduct or behaviour by or amongst its employees and the labour of its Subcontractors.</p> <p>(f) The Contractor shall, in all dealings with its labour and the labour of its Subcontractors currently employed on or connected with the Contract, pay due regard to all recognized festivals, official holidays, religious or other customs and all local laws and regulations pertaining to the employment of labour.</p>
22.2	<p><b>Contractor's Equipment</b></p> <p>22.2.1 All Contractors' Equipment brought by the Contractor onto the Site shall be deemed to be intended to be used exclusively for the execution of the Contract. The Contractor shall not remove the same from the Site without the Project Manager's consent that such Contractor's Equipment is no longer required for the execution of the Contract.</p> <p>22.2.2 Unless otherwise specified in the Contract, upon completion of the Facilities, the Contractor shall remove from the Site all Equipment brought by the Contractor onto the Site and any surplus materials remaining thereon.</p> <p>22.2.3 The Employer will, if requested, use its best endeavor to assist the Contractor in obtaining any local, state or national government permission required by the Contractor for the export of the Contractor's Equipment imported by the Contractor for use in the execution of the Contract that is no longer required for the execution of the Contract.</p>
22.3	<p><b>Site Regulations and Safety</b></p> <p>The Employer and the Contractor shall establish Site regulations setting out the rules to be observed in the execution of the Contract at the Site and shall comply therewith. The Contractor shall prepare and submit to the Employer, with a copy to the Project Manager, proposed Site regulations for the Employer's approval, which approval shall not be unreasonably withheld.</p> <p>Such Site regulations shall include, but shall not be limited to, rules in respect of security, safety of the Facilities, gate control, sanitation, medical care, and fire prevention.</p>
22.4	<p><b>Opportunities for Other Contractors</b></p> <p>22.4.1 The Contractor shall, upon written request from the Employer or the Project Manager, give all reasonable opportunities for</p>

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	<p>carrying out the work to any other contractors employed by the Employer on or near the Site.</p> <p>22.4.2 If the Contractor, upon written request from the Employer or the Project Manager, makes available to other contractors any roads or ways the maintenance for which the Contractor is responsible, permits the use by such other contractors of the Contractor's Equipment, or provides any other service of whatsoever nature for such other contractors, the Employer shall fully compensate the Contractor for any loss or damage caused or occasioned by such other contractors in respect of any such use or service, and shall pay to the Contractor reasonable remuneration for the use of such equipment or the provision of such services.</p> <p>22.4.3 The Contractor shall also so arrange to perform its work as to minimize, to the extent possible, interference with the work of other contractors. The Project Manager shall determine the resolution of any difference or conflict that may arise between the Contractor and other contractors and the workers of the Employer in regard to their work.</p> <p>22.4.4 The Contractor shall notify the Project Manager promptly of any defects in the other Contractors' work that come to its notice, and that could affect the Contractor's work. The Project Manager shall determine the corrective measures, if any, required to rectify the situation after inspection of the Facilities. Decisions made by the Project Manager shall be binding on the Contractor.</p>
22.5	<p><b>Emergency Work</b></p> <p>If, by reason of an emergency arising in connection with and during the execution of the Contract, any protective or remedial work is necessary as a matter of urgency to prevent damage to the Facilities, the Contractor shall immediately carry out such work.</p> <p>If the Contractor is unable or unwilling to do such work immediately, the Employer may do or cause such work to be done as the Employer may determine is necessary in order to prevent damage to the Facilities. In such event the Employer shall, as soon as practicable after the occurrence of any such emergency, notify the Contractor in writing of such emergency, the work done and the reasons therefor. If the work done or caused to be done by the Employer is work that the Contractor was liable to do at its own expense under the Contract, the reasonable costs incurred by the Employer in connection therewith shall be paid by the Contractor to the Employer. Otherwise, the cost of such remedial work shall be borne by the Employer.</p>
22.6	<p><b>Site Clearance</b></p> <p>22.6.1 Site Clearance in Course of Performance: In the course of carrying out the Contract, the Contractor shall keep the Site reasonably free from all unnecessary obstruction, store or remove any surplus materials, clear away any wreckage, rubbish or temporary works from the Site, and remove any Contractor's Equipment no longer required for execution of the Contract.</p> <p>22.6.2 Clearance of Site after Completion: After Completion of all parts of the Facilities, the Contractor shall clear away and remove all</p>
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	<p>wreckage, rubbish and debris of any kind from the Site, and shall leave the Site and Facilities clean and safe.</p> <p>22.6.3    <b>Disposal of Scrap</b></p> <p>"The Contractor shall with the agreement of the Employer promptly remove from the site any 'Scrap' generated during performance of any activities at site in pursuance of the Contract. The term 'Scrap' shall refer to scrap / waste / remnants arising out of the fabrication of structural steel work and piping work at the project site in the course of execution of the contract and shall also include any wastage of cables during the termination process while installing the cables.</p> <p>The ownership of such Scrap shall vest with the Contractor except in cases where the items have been issued by the Employer from its stores for their installation only without any adjustment to the Contract Price. The removal of scrap shall be subject to the Contractor producing the necessary clearance from the relevant authorities (Custom, Excise etc.), if required by the law, in respect of disposal of the scrap. The liability for the payment of the applicable taxes/duties shall be that of the Contractor.</p> <p>The Contractor shall also indemnify to keep the Employer harmless from any act of omission or negligence on the part of the Contractor in following the statutory requirements with regard to removal/disposal of scrap. The <b>Indemnity-cum-Undertaking Agreement</b> shall be furnished by Contractor as per proforma enclosed in Section-VII (Forms and Procedure). Further, in case the laws require the Employer to take prior permission of the relevant Authorities before handing over the scrap to the Contractor, the same shall be obtained by the Contractor on behalf of the Employer".</p> <p>22.7    <b>Watching and Lighting</b></p> <p>The Contractor shall provide and maintain at its own expense all lighting, fencing, and watching when and where necessary for the proper execution and the protection of the Facilities, or for the safety of the owners and occupiers of adjacent property and for the safety of the public.</p> <p>22.8 <b>Shift Work</b></p> <p>22.8.1    To achieve the required rate of progress in order to complete the Facilities within the Time for Completion, the Contractor may carry on the work, round the clock, in multiple shifts per day, as may be necessary. The Contractor shall however be responsible to comply with all applicable laws in this regard.</p> <p>22.8.2    No additional payment will be made on account of round the clock working in multiple shifts.</p> <p>22.8.3</p>
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<p><b>23. Test And Inspection</b></p>	<p>Wherever the work is carried out at night adequate lighting of working areas and access routes for pedestrians or vehicles shall be provided by the Contractor at his cost. Sufficient notice should be given by the Contractor to the Employer regarding the details of works in shifts so that necessary supervision could be provided.</p> <p>23.1 The Contractor shall at its own expense carry out at the place of manufacture and/or on the Site all such tests and/or inspections of the Plant and Equipment and any part of the Facilities as are specified in the Contract.</p> <p>23.2 The Employer and the Project Manager or their designated representatives shall be entitled to attend the aforesaid test and/or inspection, provided that the Employer shall bear all costs and expenses incurred in connection with such attendance including, but not limited to, all travelling and board and lodging expenses.</p> <p>23.3 Whenever the Contractor is ready to carry out any such test and/or inspection, the Contractor shall give a reasonable advance notice of such test and/or inspection and of the place and time thereof to the Project Manager. The Contractor shall obtain from any relevant third party or manufacturer any necessary permission or consent to enable the Employer and the Project Manager (or their designated representatives) to attend the test and/or inspection.</p> <p>23.4 The Contractor shall provide the Project Manager with a certified report of the results of any such test and/or inspection.</p> <p>If the Employer or Project Manager (or their designated representatives) fails to attend the test and/or inspection, or if it is agreed between the parties that such persons shall not do so, then the Contractor may proceed with the test and/or inspection in the absence of such persons, and may provide the Project Manager with a certified report of the results thereof.</p> <p>23.5 The Project Manager may require the Contractor to carry out any test and/or inspection not required by the Contract, provided that the Contractor's reasonable costs and expenses incurred in the carrying out of such test and/or inspection shall be added to the Contract Price. Further, if such test and/or inspection impedes the progress of work on the Facilities and/or the Contractor's performance of its other obligations under the Contract, due allowance will be made in respect of the Time for Completion and the other obligations so affected.</p> <p>23.6 If any Plant and Equipment or any part of the Facilities fails to pass any test and/or inspection, the Contractor shall either rectify or replace such Plant and Equipment or part of the Facilities and shall repeat the test and/or inspection upon giving a notice under GCC Sub-Clause 23.3.</p> <p>23.7 If any dispute or difference of opinion shall arise between the parties in connection with or arising out of the test and/or inspection of the Plant and Equipment or part of the Facilities that cannot be settled between the parties within a reasonable period of time, it may be referred to the Expert</p>

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	<p>Settlement Council (ESC) for determination in accordance with GCC Sub-Clause 6.2.</p> <p>23.8 The Contractor shall afford the Employer and the Project Manager, at the Employer's expense, access at any reasonable time to any place where the Plant and Equipment are being manufactured or the Facilities are being installed, in order to inspect the progress and the manner of manufacture or installation, provided that the Project Manager shall give the Contractor a reasonable prior notice.</p> <p>23.9 The Contractor agrees that neither the execution of a test and/or inspection of Plant and Equipment or any part of the Facilities, nor the attendance by the Employer or the Project Manager, nor the issue of any test certificate pursuant to GCC Sub-Clause 23.4, shall release the Contractor from any other responsibilities under the Contract.</p> <p>23.10 No part of the Facilities or foundations shall be covered up on the Site without the Contractor carrying out any test and/or inspection required under the Contract. The Contractor shall give a reasonable notice to the Project Manager whenever any such part of the Facilities or foundations are ready or about to be ready for test and/or inspection; such test and/or inspection and notice thereof shall be subject to the requirements of the Contract.</p> <p>23.11 The Contractor shall uncover any part of the Facilities or foundations, or shall make openings in or through the same as the Project Manager may from time to time require at the Site, and shall reinstate and make good such part or parts.</p> <p>If any part of the Facilities or foundations have been covered up at the Site after compliance with the requirement of GCC Sub-Clause 23.10 and are found to be executed in accordance with the Contract, the expenses of uncovering, making openings in or through, reinstating, and making good the same shall be borne by the Employer, and the Time for Completion shall be reasonably adjusted to the extent that the Contractor has thereby been delayed or impeded in the performance of any of its obligations under the Contract.</p>
<p><b>24. Completion of the Facilities</b></p>	<p>24.1 As soon as installation of the Facilities or any part thereof has, in the opinion of the Contractor, been completed as specified in the Technical Specifications, excluding minor items not materially affecting the operation or safety of the Facilities, the Contractor shall so notify the Employer in writing.</p> <p>24.2 Within seven (7) days after receipt of the notice from the Contractor under GCC Sub-Clause 24.1, the Employer shall supply the operating and maintenance personnel and the raw materials, utilities, lubricants, chemicals, catalysts, facilities, services as specified in Appendix 6 (Scope of Works and Supply by the Employer) to the Contract Agreement, required for Pre-commissioning of the Facilities or any part thereof.</p> <p>24.3 As soon as reasonably practicable after the operating and maintenance personnel have been supplied by the Employer and the raw materials, utilities, lubricants, chemicals, catalysts, facilities, services and other matters, if so specified in Appendix 6 (Scope of Works and Supply by the</p>
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	<p>Employer)/ Technical Specifications, have been provided by the Employer in accordance with GCC Sub-Clause 24.2, the Contractor shall commence Pre-commissioning of the Facilities or the relevant part thereof in preparation for Commissioning.</p> <p>24.4 As soon as all works in respect of Pre-commissioning are completed and, in the opinion of the Contractor, the Facilities or any part thereof is ready for Commissioning, the Contractor shall commence Commissioning as per procedures stipulated in Technical Specifications, and as soon as Commissioning is satisfactorily completed, the Contractor shall so notify the Project Manager in writing.</p> <p>24.5 The Project Manager shall, within fourteen (14) days after receipt of the Contractor's notice under GCC Sub-Clause 24.4, either issue a Completion Certificate in the form specified in the Forms and Procedures section in the bidding documents, stating that the Facilities or that part thereof have reached Completion as at the date of the Contractor's notice under GCC Sub-Clause 24.4, or notify the Contractor in writing of any defects and/or deficiencies.</p> <p>If the Project Manager notifies the Contractor of any defects and/or deficiencies, the Contractor shall then correct such defects and/or deficiencies, and shall repeat the procedure described in GCC Sub-Clause 24.4.</p> <p>If the Project Manager is satisfied that the Facilities or that part thereof have reached Completion, the Project Manager shall, within seven (7) days after receipt of the Contractor's repeated notice, issue a Completion Certificate stating that the Facilities or that part thereof have reached Completion as at the date of the Contractor's repeated notice.</p> <p>If the Project Manager is not so satisfied, then it shall notify the Contractor in writing of any defects and/or deficiencies within seven (7) days after receipt of the Contractor's repeated notice, and the above procedure shall be repeated.</p> <p>24.6 If the Project Manager fails to issue the Completion Certificate and fails to inform the Contractor of any defects and/or deficiencies within fourteen (14) days after receipt of the Contractor's notice under GCC Sub-Clause 24.4 or within seven (7) days after receipt of the Contractor's repeated notice under GCC Sub-Clause 24.5, or if the Employer makes use of the Facilities or part thereof, then the Facilities or that part thereof shall be deemed to have reached Completion as of the date of the Contractor's notice or repeated notice, or as of the Employer's use of the Facilities, as the case may be.</p> <p>24.7 As soon as possible after Completion, the Contractor shall complete all outstanding minor items so that the Facilities are fully in accordance with the requirements of the Contract, failing which the Employer will undertake such completion and deduct the costs thereof from any monies owing to the Contractor.</p> <p>24.8 Upon Completion, the Employer shall be responsible for the care and custody of the Facilities or the relevant part thereof, together with the risk</p>

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	<p>of loss or damage thereto, and shall thereafter take over the Facilities or the relevant part thereof.</p> <p><b>25. Commissioning, Guarantee Tests and Operational Acceptance</b></p> <p><b>25.1 Commissioning</b></p> <p>25.1.1 Commissioning of the Facilities or any part thereof shall be completed by the Contractor as per procedures detailed in the Technical Specifications.</p> <p>The Employer shall, unless otherwise specified in Appendix 6 (Scope of Works and Supply by the Employer)/ Technical Specifications, supply the operating and maintenance personnel and all raw materials, utilities, lubricants, chemicals, catalysts, facilities, services and other matters required for Commissioning of the Facilities.</p> <p><b>25.2 Guarantee Test</b></p> <p>25.2.1 The Guarantee Test (and repeats thereof) shall be conducted by the Contractor after Commissioning of the Facilities or the relevant part thereof to ascertain whether the Facilities or the relevant part can attain the Functional Guarantees specified in the Contract Documents. The Contractor's and Project Manager's advisory personnel shall attend the Guarantee Test. The Employer shall promptly provide the Contractor with such information as the Contractor may reasonably require in relation to the conduct and results of the Guarantee Test (and any repeats thereof).</p> <p>25.2.2 If for reasons attributable to the Employer, the Guarantee Test of the Facilities or the relevant part thereof cannot be successfully completed within the period of twelve months from the date of Completion of respective facility, the payment towards Successful Completion of Guarantee Test, shall be released to the Contractor against Bank Guarantee. Such Bank Guarantee shall have initial validity of one (1) year. The Bank Guarantee shall be extended for any subsequent period, if required, such that the same remains valid till the Successful Completion of Guarantee Test.</p> <p><b>25.3 Operational Acceptance</b></p> <p>25.3.1 Subject to GCC Sub-Clause 25.4 (Partial Acceptance) below, Operational Acceptance shall occur in respect of the Facilities or any part thereof when</p> <p>(a) the Guarantee Test has been successfully completed and the Functional Guarantees are met; or</p> <p>(b) the Contractor has paid the liquidated damages specified in GCC Sub-Clause 28.3 hereof; and</p> <p>(c) any minor items mentioned in GCC Sub-Clause 24.7 hereof relevant to the Facilities or that part thereof have been completed.</p>
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	<p>25.3.2 At any time after any of the events set out in GCC Sub-Clause 25.3.1 have occurred, the Contractor may give a notice to the Project Manager requesting the issue of an Operational Acceptance Certificate in the form provided in the Bidding Documents or in another form acceptable to the Employer in respect of the Facilities or the part thereof specified in such notice as at the date of such notice.</p> <p>25.3.3 The Project Manager shall, after consultation with the Employer, and within forty five (45) days after receipt of the Contractor's notice, issue an Operational Acceptance Certificate.</p> <p>25.3.4 If within forty five (45) days after receipt of the Contractor's notice, the Project Manager fails to issue the Operational Acceptance Certificate or fails to inform the Contractor in writing of the justifiable reasons why the Project Manager has not issued the Operational Acceptance Certificate, the Facilities or the relevant part thereof shall be deemed to have been accepted as at the date of the Contractor's said notice.</p> <p>25.4 <b>Partial Acceptance</b></p> <p>25.4.1 If the Contract specifies that Completion and Commissioning shall be carried out in respect of parts of the Facilities, the provisions relating to Completion and Commissioning including the Guarantee Test shall apply to each such part of the Facilities individually, and the Operational Acceptance Certificate shall be issued accordingly for each such part of the Facilities.</p> <p>25.4.2 If a part of the Facilities comprises facilities such as buildings, for which no Commissioning or Guarantee Test is required, then the Project Manager shall issue the Operational Acceptance Certificate for such facility when it attains Completion, provided that the Contractor shall thereafter complete any outstanding minor items that are listed in the Operational Acceptance Certificate.</p> <p><b>F. Guarantees and Liabilities</b></p> <p>26. <b>Completion Time Guarantee</b></p> <p>26.1 The Contractor guarantees that it shall attain Completion of the Facilities (or a part for which a separate time for completion is specified in the SCC) within the Time for Completion specified in the SCC pursuant to GCC Sub-Clause 8.2, or within such extended time to which the Contractor shall be entitled under GCC Clause 40 (Extension of Time for Completion) hereof.</p> <p>26.2 If the Contractor fails to attain Completion of the Facilities or any part thereof within the Time for Completion or any extension thereof under GCC Clause 40 (Extension of Time for Completion), the Contractor shall pay to the Employer liquidated damages in the amount computed at the rates specified in the SCC. The aggregate amount of such liquidated damages shall in no event exceed the amount specified as "Maximum" in</p>

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	<p>the SCC. Once the "Maximum" is reached, the Employer may consider termination of the Contract, pursuant to GCC Sub-Clause 42.2.2.</p> <p>Such payment shall completely satisfy the Contractor's obligation to attain Completion of the Facilities or the relevant part thereof within the Time for Completion or any extension thereof under GCC Clause 40 (Extension of Time for Completion). The Contractor shall have no further liability whatsoever to the Employer in respect thereof.</p> <p>However, the payment of liquidated damages shall not in any way relieve the Contractor from any of its obligations to complete the Facilities or from any other obligations and liabilities of the Contractor under the Contract.</p> <p>Save for liquidated damages payable under this GCC Sub-Clause 26.2, the failure by the Contractor to attain any milestone or other act, matter or thing by any date specified in Appendix 4 (Time Schedule) to the Contract Agreement and/or other program of work prepared pursuant to GCC Clause 18 (Program of Performance) shall not render the Contractor liable for any loss or damage thereby suffered by the Employer.</p>
26.3	No bonus shall be given for earlier completion of the facilities or part thereof.
<b>27. Defect Liability</b>	
27.1	The Contractor warrants that the Facilities or any part thereof shall be free from defects in the design, engineering, materials and workmanship of the Plant and Equipment supplied and of the work executed.
27.2	<p>The Defect Liability Period shall be eighteen (18) months from the date of Completion of the Facilities (or any part thereof) or twelve (12) months from the date of Operational Acceptance of the Facilities (or any part thereof), whichever first occurs, unless specified otherwise in the SCC.</p> <p>If during the Defect Liability Period any defect should be found in the design, engineering, materials and workmanship of the Plant and Equipment supplied or of the work executed by the Contractor, the Contractor shall promptly, in consultation and agreement with the Employer regarding appropriate remedying of the defects, and at its cost, repair, replace or otherwise make good (as the Contractor shall, at its discretion, determine) such defect as well as any damage to the Facilities caused by such defect. The Contractor shall not be responsible for the repair, replacement or making good of any defect or of any damage to the Facilities arising out of or resulting from any of the following causes:</p>
	<p>(a) improper operation or maintenance of the Facilities by the Employer</p> <p>(b) operation of the Facilities outside specifications provided in the Contract</p> <p>(c) normal wear and tear.</p>
27.3	<p>The Contractor's obligations under this GCC Clause 27 shall not apply to</p> <p>(a) any materials that are supplied by the Employer under GCC Sub-Clause 21.2 (Employer-Supplied Plant, Equipment and Materials),</p>

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	<p>are normally consumed in operation, or have a normal life shorter than the Defect Liability Period stated herein</p> <p>(b) any designs, specifications or other data designed, supplied or specified by or on behalf of the Employer or any matters for which the Contractor has disclaimed responsibility herein</p> <p>(c) any other materials supplied or any other work executed by or on behalf of the Employer, except for the work executed by the Employer under GCC Sub-Clause 27.7.</p>
27.4	The Employer shall give the Contractor a notice stating the nature of any such defect together with all available evidence thereof, promptly following the discovery thereof. The Employer shall afford all reasonable opportunity for the Contractor to inspect any such defect.
27.5	<p>The Employer shall afford the Contractor all necessary access to the Facilities and the Site to enable the Contractor to perform its obligations under this GCC Clause 27.</p> <p>The Contractor may, with the consent of the Employer, remove from the Site any Plant and Equipment or any part of the Facilities that are defective if the nature of the defect, and/or any damage to the Facilities caused by the defect, is such that repairs cannot be expeditiously carried out at the Site.</p>
27.6	<p>If the repair, replacement or making good is of such a character that it may affect the efficiency of the Facilities or any part thereof, the Employer may give to the Contractor a notice requiring that tests of the defective part of the Facilities shall be made by the Contractor immediately upon completion of such remedial work, whereupon the Contractor shall carry out such tests.</p> <p>If such part fails the tests, the Contractor shall carry out further repair, replacement or making good (as the case may be) until that part of the Facilities passes such tests. The tests in character shall in any case be not less than what has already been agreed by the Employer and the Contractor for the original equipment/part of the Facilities.</p>
27.7	If the Contractor fails to commence the work necessary to remedy such defect or any damage to the Facilities caused by such defect within a reasonable time (which shall in no event be considered to be less than fifteen (15) days), the Employer may, following notice to the Contractor, proceed to do such work, and the reasonable costs incurred by the Employer in connection therewith shall be paid to the Employer by the Contractor or may be deducted by the Employer from any monies due to the Contractor or claimed under the Performance Security.
27.8	If the Facilities or any part thereof cannot be used by reason of such defect and/or making good of such defect, the Defect Liability Period of the Facilities or such part, as the case may be, shall be extended by a period equal to the period during which the Facilities or such part cannot be used by the Employer because of any of the aforesaid reasons. Upon correction of the defects in the Facilities or any part thereof by repair/replacement, such repair/replacement shall have the Defect Liability Period extended

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	<p>by a period of twelve (12) month from the time such replacement/repair of the Facilities or any part thereof.</p> <p>27.8.1 At the end of the Defect Liability Period, the contractor liability ceases except for latent defects. The contractor's liability for latent defects warranty shall be limited to a period of five (5) years from the end of Defect Liability Period. For the purpose of the this clause, the latent defects shall be the defects inherently lying within the material or arising out of design deficiency which do not manifest themselves during the Defect Liability Period in this GCC clause 27, but later.</p> <p>27.9 Except as provided in GCC Clauses 27 and 33 (Loss of or Damage to Property / Accident or Injury to Workers/Indemnification), the Contractor shall be under no liability whatsoever and howsoever arising, and whether under the Contract or at law, in respect of defects in the Facilities or any part thereof, the Plant and Equipment, design or engineering or work executed that appear after Completion of the Facilities or any part thereof, except where such defects are the result of the gross negligence, fraud, criminal or wilful action of the Contractor.</p> <p>27.10 In addition, the Contractor shall also provide an extended warranty for any such component of the Facilities and during the period of time as may be specified in the SCC. Such obligation shall be in addition to the defect liability specified under GCC Sub-Clause 27.2.</p>
28. Functional Guarantees	<p>28.1 The Contractor guarantees that during the Guarantee Test, the Facilities and all parts thereof shall attain the Functional Guarantees specified in Appendix 8 (Functional Guarantees) to the Contract Agreement, subject to and upon the conditions therein specified.</p> <p>28.2 If, for reasons attributable to the Contractor, the guaranteed level of the Functional Guarantees specified in Appendix 8 (Functional Guarantees) to the Contract Agreement are not met either in whole or in part, the Contractor shall, within a mutually agreed time, at its cost and expense make such changes, modifications and/or additions to the Plant or any part thereof as may be necessary to meet such Guarantees. The Contractor shall notify the Employer upon completion of the necessary changes, modifications and/or additions, and shall seek the Employer's consent to repeat the Guarantee Test. If the specified Functional Guarantees are not established even during the repeat of the Guarantee Test, the Employer may at its option, either</p> <ul style="list-style-type: none"> <li>(a) Reject the Equipment and recover the payments already made, or</li> <li>(b) Terminate the Contract pursuant to GCC Sub-Clause 42.2.2 and recover the payments already made, or</li> <li>(c) Accept the equipment after levy of liquidated damages in accordance with the provisions specified in Appendix-8(Functional Guarantees) to the Contract Agreement.</li> </ul>

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28.3	<p>In case the Employer exercises its option to accept the equipment after levy of liquidated damages, the payment of liquidated damages under GCC Sub-Clause 28.2, up to the limitation of liability specified in the Appendix-8 (Functional Guarantees) to the Contract Agreement, shall completely satisfy the Contractor's guarantees under GCC Sub-Clause 28.2, and the Contractor shall have no further liability whatsoever to the Employer in respect thereof. Upon the payment of such liquidated damages by the Contractor, the Project Manager shall issue the Operational Acceptance Certificate for the Facilities or any part thereof in respect of which the liquidated damages have been so paid.</p>
<p><b>29. Patent Indemnity</b></p>	
29.1	<p>The Contractor shall, subject to the Employer's compliance with GCC Sub-Clause 29.2, indemnify and hold harmless the Employer and its employees and officers from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of whatsoever nature, including attorney's fees and expenses, which the Employer may suffer as a result of any infringement or alleged infringement of any patent, utility model, registered design, trademark, copyright or other intellectual property right registered or otherwise existing at the date of the Contract by reason of: (a) the installation of the Facilities by the Contractor or the use of the Facilities in the country where the Site is located; and (b) the sale of the products produced by the Facilities in any country.</p> <p>Such indemnity shall not cover any use of the Facilities or any part thereof other than for the purpose indicated by or to be reasonably inferred from the Contract, any infringement resulting from the use of the Facilities or any part thereof, or any products produced thereby in association or combination with any other equipment, plant or materials not supplied by the Contractor, pursuant to the Contract Agreement.</p>
29.2	<p>If any proceedings are brought or any claim is made against the Employer arising out of the matters referred to in GCC Sub-Clause 29.1, the Employer shall promptly give the Contractor a notice thereof, and the Contractor may at its own expense and in the Employer's name conduct such proceedings or claim and any negotiations for the settlement of any such proceedings or claim.</p> <p>If the Contractor fails to notify the Employer within twenty-eight (28) days after receipt of such notice that it intends to conduct any such proceedings or claim, then the Employer shall be free to conduct the same on its own behalf. Unless the Contractor has so failed to notify the Employer within the twenty-eight (28) day period, the Employer shall make no admission that may be prejudicial to the defence of any such proceedings or claim.</p> <p>The Employer shall, at the Contractor's request, afford all available assistance to the Contractor in conducting such proceedings or claim, and shall be reimbursed by the Contractor for all reasonable expenses incurred in so doing.</p>
29.3	<p>The Employer shall indemnify and hold harmless the Contractor and its employees, officers and Subcontractors from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of whatsoever nature, including attorney's</p>
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	<p>fees and expenses, which the Contractor may suffer as a result of any infringement or alleged infringement of any patent, utility model, registered design, trademark, copyright or other intellectual property right registered or otherwise existing at the date of the Contract arising out of or in connection with any design, data, drawing, specification, or other documents or materials provided or designed by or on behalf of the Employer.</p> <p><b>30. Limitation of Liability</b></p> <p>30.1 Except in cases of criminal negligence or wilful misconduct,</p> <p>(a) the Contractor shall not be liable to the Employer, whether in contract, tort, or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, provided that this exclusion shall not apply to any obligation of the Contractor to pay liquidated damages to the Employer and</p> <p>(b) the aggregate liability of the Contractor to the Employer, whether under the Contract, in tort or otherwise, shall not exceed the total Contract Price, provided that this limitation shall not apply to any obligation of the Contractor to indemnify the Employer with respect to patent infringement.</p> <p><b>G. Risk Distribution</b></p> <p><b>31. Transfer of Ownership</b></p> <p>31.1 <b>Ownership of the Plant and Equipment</b></p> <p><b>FOR ICB TENDER</b></p> <p>Ownership of the Plant and Equipment (including spare parts) to be imported into the country where the Site is located shall be transferred to the Employer upon loading on to the mode of transport to be used to convey the Plant and Equipment from the country of origin to that country and upon endorsement of despatch document in favour of the Employer.</p> <p>Ownership of the Plant and Equipment (including spare parts) procured in the country where the Site is located shall be transferred to the Employer when the Plant and Equipment are loaded on to the mode of transport to be used to convey the Plant and Equipment from the works to the site and upon endorsement of the despatch documents in favour of the Employer.</p> <p><b>FOR DCB TENDER</b></p> <p>Ownership of the Plant and Equipment (including spare parts) procured in the country where the Site is located shall be transferred to the Employer when the Plant and Equipment are loaded on to the mode of transport to be used to convey the Plant and Equipment from the works to the site and upon endorsement of the despatch documents in favour of the Employer.</p>

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31.2	Ownership of the Contractor's Equipment used by the Contractor and its Subcontractors in connection with the Contract shall remain with the Contractor or its Subcontractors.	
31.3	<p><b>Disposal of Surplus Material</b></p> <p>"Ownership of any Plant and Equipment in excess of the requirements for the Facilities (i.e. surplus material) shall revert to the Contractor upon Completion of the Facilities and Guarantee Test or at such earlier time when the Employer and the Contractor agree that the Plant and Equipment in question are no longer required for the Facilities, provided quantity of any Plant and Equipment specifically stipulated in the Contract shall be the property of the Employer whether or not incorporated in the Facilities. The Contractor shall remove from the site such surplus material brought by him in pursuance of the Contract, subject to the Contractor producing the necessary clearance from the relevant authorities (Customs, Excise etc.), if required by law, in respect of re-export or disposal of the surplus material locally. The liability for the payment of the applicable taxes/duties, if any, on the surplus material so re-exported and/or disposed locally shall be that of the Contractor.</p> <p>The Contractor shall also indemnify to keep the Employer harmless from any act of omission or negligence on the part of the Contractor in following the statutory requirements with regard to removal/disposal of surplus material. The Indemnity-cum-Undertaking Agreement shall be furnished by contractor as per proforma enclosed in Section-VII (Part 3 of 3 - Forms and Procedures). Further, in case the laws require the Employer to take prior permission of the relevant Authorities before handing over the surplus material to the Contractor, the same shall be obtained by the Contractor on behalf of the Employer."</p>	
31.4	Notwithstanding the transfer of ownership of the Plant and Equipment, the responsibility for care and custody thereof together with the risk of loss or damage thereto shall remain with the Contractor pursuant to GCC Clause 32 (Care of Facilities) hereof until Completion of the Facilities or the part thereof in which such Plant and Equipment are incorporated.	
31.5	In case of two/three Contracts entered into between the Employer and the Contractor as per GCC Sub-Clause 3.6 or where the Employer hands over his equipment to the Contractor for executing the Contract, then the Contractor shall at the time of taking delivery of the Equipment through Bill of Lading or other despatch documents furnish Trust Receipt for Plant, Equipment and Materials and also execute an <b>Indemnity-cum-Undertaking Agreement</b> in favour of the Employer in the form acceptable to Employer for keeping the equipment in safe custody and to utilise the same exclusively for the purpose of the said Contract. Proforma for the Trust Receipt and <b>Indemnity-cum-Undertaking Agreement</b> is enclosed under Section-VII (Forms and Procedures). The Employer shall also issue a separate Authorisation Letter to the Contractor to enable him to take physical delivery of plant, equipment and materials from the Employer as per proforma enclosed under Section-VII (Forms and Procedures).	
32.	<b>Care of Facilities</b>	
32.1	The Contractor shall be responsible for the care and custody of the Facilities or any part thereof until the date of Completion of the Facilities pursuant to GCC Clause 24 (Completion of the Facilities) or, where the	
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	<p>Contract provides for Completion of the Facilities in parts, until the date of Completion of the relevant part, and shall make good at its own cost any loss or damage that may occur to the Facilities or the relevant part thereof from any cause whatsoever during such period. The Contractor shall also be responsible for any loss or damage to the Facilities caused by the Contractor or its Subcontractors in the course of any work carried out, pursuant to GCC Clause 27 (Defect Liability). Notwithstanding the foregoing, the Contractor shall not be liable for any loss or damage to the Facilities or that part thereof caused by reason of any of the matters specified or referred to in paragraphs (a), (b) and (c) of GCC Sub-Clauses 32.2 and 38.1.</p> <p>32.2 If any loss or damage occurs to the Facilities or any part thereof or to the Contractor's temporary facilities by reason of</p> <p>(a) (insofar as they relate to the country where the Site is located) nuclear reaction, nuclear radiation, radioactive contamination, pressure wave caused by aircraft or other aerial objects, or any other occurrences that an experienced contractor could not reasonably foresee, or if reasonably foreseeable could not reasonably make provision for or insure against, insofar as such risks are not normally insurable on the insurance market and are mentioned in the general exclusions of the policy of insurance, including War Risks and Political Risks, taken out under GCC Clause 34 (Insurance) hereof</p> <p>(b) any use or occupation by the Employer or any third party (other than a Subcontractor) authorized by the Employer of any part of the Facilities</p> <p>(c) any use of or reliance upon any design, data or specification provided or designated by or on behalf of the Employer, or any such matter for which the Contractor has disclaimed responsibility herein,</p> <p>the Employer shall pay to the Contractor all sums payable in respect of the Facilities executed, notwithstanding that the same be lost, destroyed or damaged, and will pay to the Contractor the replacement value of all temporary facilities and all parts thereof lost, destroyed or damaged. If the Employer requests the Contractor in writing to make good any loss or damage to the Facilities thereby occasioned, the Contractor shall make good the same at the cost of the Employer in accordance with GCC Clause 39 (Change in the Facilities). If the Employer does not request the Contractor in writing to make good any loss or damage to the Facilities thereby occasioned, the Employer shall either request a change in accordance with GCC Clause 39 (Change in the Facilities), excluding the performance of that part of the Facilities thereby lost, destroyed or damaged, or, where the loss or damage affects a substantial part of the Facilities, the Employer shall terminate the Contract pursuant to GCC Sub-Clause 42.1 (Termination for Employer's Convenience) hereof, except that the Contractor shall have no entitlement to profit under paragraph (e) of GCC Sub-Clause 42.1.3 in respect of any unexecuted Facilities as at the date of termination.</p> <p>32.3 The Contractor shall be liable for any loss of or damage to any Contractor's Equipment, or any other property of the Contractor used or intended to be used for purposes of the Facilities, except (i) as mentioned in GCC Sub-Clause 32.2 (with respect to the Contractor's temporary</p>	
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	<p>facilities), and (ii) where such loss or damage arises by reason of any of the matters specified in GCC Sub-Clauses 32.2(b) and (c) and 38.1.</p> <p>32.4 With respect to any loss or damage caused to the Facilities or any part thereof or to the Contractor's Equipment by reason of any of the matters specified in GCC Sub-Clause 38.1, the provisions of GCC Sub-Clause 38.3 shall apply.</p>
	<p><b>33. Loss of or Damage to Property; Accident or Injury to workers; Indemnification</b></p> <p>33.1 Subject to GCC Sub-Clause 33.3, the Contractor shall indemnify and hold harmless the Employer and its employees and officers from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of whatsoever nature, including attorney's fees and expenses, in respect of the death or injury of any person or loss of or damage to any property (other than the Facilities whether accepted or not), arising in connection with the supply and installation of the Facilities and by reason of the negligence of the Contractor or its Subcontractors, or their employees, officers or agents, except any injury, death or property damage caused by the negligence of the Employer, its contractors, employees, officers or agents.</p> <p>33.2 If any proceedings are brought or any claim is made against the Employer that might subject the Contractor to liability under GCC Sub-Clause 33.1, the Employer shall promptly give the Contractor a notice thereof and the Contractor may at its own expense and in the Employer's name conduct such proceedings or claim and any negotiations for the settlement of any such proceedings or claim.</p> <p>If the Contractor fails to notify the Employer within twenty-eight (28) days after receipt of such notice that it intends to conduct any such proceedings or claim, then the Employer shall be free to conduct the same on its own behalf. Unless the Contractor has so failed to notify the Employer within the twenty-eight (28) day period, the Employer shall make no admission that may be prejudicial to the defence of any such proceedings or claim.</p> <p>The Employer shall, at the Contractor's request, afford all available assistance to the Contractor in conducting such proceedings or claim, and shall be reimbursed by the Contractor for all reasonable expenses incurred in so doing.</p> <p>33.3 The Employer shall indemnify and hold harmless the Contractor and its employees, officers and Subcontractors from any liability for loss of or damage to property of the Employer, other than the Facilities not yet taken over, that is caused by fire, explosion or any other perils, in excess of the amount recoverable from insurances procured under GCC Clause 34 (Insurances), provided that such fire, explosion or other perils were not caused by any act or failure of the Contractor.</p> <p>33.4 The party entitled to the benefit of an indemnity under this GCC Clause 33 shall take all reasonable measures to mitigate any loss or damage which has occurred. If the party fails to take such measures, the other party's liabilities shall be correspondingly reduced.</p>
<b>34. Insurance</b>	

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	<p>34.1 To the extent specified in Appendix 3 (Insurance Requirements) to the Contract Agreement, the Contractor shall at its expense take out and maintain in effect, or cause to be taken out and maintained in effect, during the performance of the Contract, the insurances set forth below in the sums and with the deductibles and other conditions specified in the said Appendix. The identity of the insurers and the form of the policies shall be subject to the approval of the Employer, who should not unreasonably withhold such approval.</p> <p>(a) <b>Cargo Insurance During Transport</b></p> <p>Covering loss or damage occurring while in transit from the Contractor's or Subcontractor's works or stores until arrival at the Site, to the Plant and Equipment (including spare parts therefor) and to the Contractor's Equipment.</p> <p>(b) <b>Installation All Risks Insurance</b></p> <p>Covering physical loss or damage to the Facilities at the Site, occurring prior to Completion of the Facilities, with extended maintenance coverage for the Contractor's liability in respect of any loss or damage occurring during the Defect Liability Period while the Contractor is on the Site for the purpose of performing its obligations during the Defect Liability Period.</p> <p>(c) <b>Third Party Liability Insurance</b></p> <p>Covering bodily injury or death suffered by third parties (including the Employer's personnel) and loss of or damage to property occurring in connection with the supply and installation of the Facilities.</p> <p>(d) <b>Automobile Liability Insurance</b></p> <p>Covering use of all vehicles used by the Contractor or its Subcontractors (whether or not owned by them) in connection with the execution of the Contract.</p> <p>(e) <b>Workers' Compensation</b></p> <p>In accordance with the statutory requirements applicable in any country where the Contract or any part thereof is executed.</p> <p>(f) <b>Employer's Liability</b></p> <p>In accordance with the statutory requirements applicable in any country where the Contract or any part thereof is executed.</p> <p>(g) <b>Other Insurances</b></p> <p>Such other insurances as may be specifically agreed upon by the parties hereto as listed in the said Appendix 3.</p> <p>34.2 The Employer shall be named as co-insured under all insurance policies taken out by the Contractor pursuant to GCC Sub-Clause 34.1, except for the Third Party Liability, Workers' Compensation and Employer's Liability Insurances, and the Contractor's Subcontractors shall be named</p>
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	<p>as co-insureds under all insurance policies taken out by the Contractor pursuant to GCC Sub-Clause 34.1 except for the Cargo Insurance During Transport, Workers' Compensation and Employer's Liability Insurances. All insurer's rights of subrogation against such co-insureds for losses or claims arising out of the performance of the Contract shall be waived under such policies.</p> <p>34.3 The Contractor shall, in accordance with the provisions of Appendix 3 (Insurance Requirements) to the Contract Agreement, deliver to the Employer certificates of insurance (or copies of the insurance policies) as evidence that the required policies are in full force and effect. The certificates shall provide that no less than twenty-one (21) days' notice shall be given to the Employer by insurers prior to cancellation or material modification of a policy.</p> <p>34.4 The Contractor shall ensure that, where applicable, its Subcontractor(s) shall take out and maintain in effect adequate insurance policies for their personnel and vehicles and for work executed by them under the Contract, unless such Subcontractors are covered by the policies taken out by the Contractor.</p> <p>34.5 The Employer shall at its expense take out and maintain in effect during the performance of the Contract those insurances specified in Appendix 3 (Insurance Requirements) to the Contract Agreement.</p> <p>34.6 If the Contractor fails to take out and/or maintain in effect the insurances referred to in GCC Sub-Clause 34.1, the Employer may take out and maintain in effect any such insurances and may from time to time deduct from any amount due the Contractor under the Contract any premium that the Employer shall have paid to the insurer, or may otherwise recover such amount as a debt due from the Contractor. If the Employer fails to take out and/or maintain in effect the insurances referred to in GCC 34.5, the Contractor may take out and maintain in effect any such insurances and may from time to time deduct from any amount due the Employer under the Contract any premium that the Contractor shall have paid to the insurer, or may otherwise recover such amount as a debt due from the Employer. If the Contractor fails to or is unable to take out and maintain in effect any such insurances, the Contractor shall nevertheless have no liability or responsibility towards the Employer, and the Contractor shall have full recourse against the Employer for any and all liabilities of the Employer herein.</p> <p>34.7 Unless otherwise provided in the Contract, the Contractor shall prepare and conduct all and any claims made under the policies effected by it pursuant to this GCC Clause 34, and all monies payable by any insurers shall be paid to the Contractor as per the procedure outlined in GCC Sub-Clause 34.8 below. The Employer shall give to the Contractor all such reasonable assistance as may be required by the Contractor. With respect to insurance claims in which the Employer's interest is involved, the Contractor shall not give any release or make any compromise with the insurer without the prior written consent of the Employer. With respect to insurance claims in which the Contractor's interest is involved, the Employer shall not give any release or make any compromise with the insurer without the prior written consent of the Contractor.</p>

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34.8	<p>(i) Wherever total damages/loss of equipment/material, would occur, the Contractor will be entitled to payment of all payments received from the underwriters except the following amounts:</p> <p>(a) The amount paid to the Contractor under the Contract in respect of equipment/material damaged/lost (excluding the pro-rata initial advance) but including the entire amount of escalation, if any, already paid to the Contractor.</p> <p>(b) Taxes and duties which have already been paid by the Employer.</p> <p>In the event the claim money settled, is less than the total of the amount in a &amp; b above, then the entire claim money settled will be retained by the Employer and the Contractor will forthwith pay the Employer the short fall amount between the claim money and the total of amounts as per a &amp; b mentioned above.</p> <p>Subsequent payments, if any, due under the Contract shall be regulated by the relevant terms of payment.</p> <p>(ii) In case of damage to any equipment/material during any stage, the Contractor upon rectification of the damaged equipment to the satisfaction of the Employer shall be paid to the extent of full claims settled by the underwriters.</p>
35. Unforeseen Conditions	<p>35.1 If, during the execution of the Contract, the Contractor shall encounter on the Site any physical conditions (other than climatic conditions) or artificial obstructions that could not have been reasonably foreseen prior to the date of the Contract Agreement by an experienced contractor on the basis of reasonable examination of the data relating to the Facilities (including any data as to boring tests) provided by the Employer, and on the basis of information that it could have obtained from a visual inspection of the Site (if access thereto was available) or other data readily available to it relating to the Facilities, and if the Contractor determines that it will in consequence of such conditions or obstructions incur additional cost and expense or require additional time to perform its obligations under the Contract that would not have been required if such physical conditions or artificial obstructions had not been encountered, the Contractor shall promptly, and before performing additional work or using additional Plant and Equipment or Contractor's Equipment, notify the Project Manager in writing of</p> <p>(a) the physical conditions or artificial obstructions on the Site that could not have been reasonably foreseen</p> <p>(b) the additional work and/or Plant and Equipment and/or Contractor's Equipment required, including the steps which the Contractor will or proposes to take to overcome such conditions or obstructions</p> <p>(c) the extent of the anticipated delay</p> <p>(d) the additional cost and expense that the Contractor is likely to incur.</p> <p>On receiving any notice from the Contractor under this GCC Sub-Clause 35.1, the Project Manager shall promptly consult with the Employer and</p>
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	<p>Contractor and decide upon the actions to be taken to overcome the physical conditions or artificial obstructions encountered. Following such consultations, the Project Manager shall instruct the Contractor, with a copy to the Employer, of the actions to be taken.</p> <p>35.2 Any reasonable additional cost and expense incurred by the Contractor in following the instructions from the Project Manager to overcome such physical conditions or artificial obstructions referred to in GCC Sub-Clause 35.1 shall be paid by the Employer to the Contractor as an addition to the Contract Price.</p> <p>35.3 If the Contractor is delayed or impeded in the performance of the Contract because of any such physical conditions or artificial obstructions referred to in GCC Sub-Clause 35.1, the Time for Completion shall be extended in accordance with GCC Clause 40 (Extension of Time for Completion).</p>
<b>36. Change in Laws and Regulations</b>	<p>36.1 If, after the date seven (7) days prior to the deadline set for Price Bid submission, in the country where the Site is located, any law, regulation, ordinance, order or by-law having the force of law is enacted, promulgated, abrogated or changed (which shall be deemed to include any change in interpretation or application by the competent authorities) that subsequently affects the costs and expenses of the Contractor and/or the Time for Completion, the Contract Price shall be correspondingly increased or decreased, and/or the Time for Completion shall be reasonably adjusted to the extent that the Contractor has thereby been affected in the performance of any of its obligations under the Contract. However, these adjustments would be restricted to items in respect of both direct transactions between the Employer and Contractor and Bought out items (to be dispatched directly from the sub-vendor's works to NTPC Site). These adjustments shall not be applicable on procurement of raw materials, intermediary components etc. by the Contractor. Notwithstanding the foregoing, such additional or reduced costs shall not be separately paid or credited if the same has already been accounted for in the price adjustment provisions where applicable, in accordance with the Appendix 2 to the Contract Agreement.</p>
<b>37. Force Majeure</b>	<p>37.1 "Force Majeure" shall mean any event beyond the reasonable control of the Employer or of the Contractor, as the case may be, and which is unavoidable notwithstanding the reasonable care of the party affected.</p> <p>37.2 If either party is prevented, hindered or delayed from or in performing any of its obligations under the Contract by an event of Force Majeure, then it shall notify the other in writing of the occurrence of such event and the circumstances thereof within fourteen (14) days after the occurrence of such event.</p> <p>37.3 The party who has given such notice shall be excused from the performance or punctual performance of its obligations under the Contract</p>
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	<p>for so long as the relevant event of Force Majeure continues and to the extent that such party's performance is prevented, hindered or delayed. The Time for Completion shall be extended in accordance with GCC Clause 40 (Extension of Time for Completion).</p> <p>37.4 The party or parties affected by the event of Force Majeure shall use reasonable efforts to mitigate the effect thereof upon its or their performance of the Contract and to fulfil its or their obligations under the Contract, but without prejudice to either party's right to terminate the Contract under GCC Sub-Clauses 37.6 and 38.5.</p> <p>37.5 No delay or non-performance by either party hereto caused by the occurrence of any event of Force Majeure shall</p> <p>(a) constitute a default or breach of the Contract</p> <p>(b) (subject to GCC Sub-Clauses 32.2, 38.3 and 38.4) give rise to any claim for damages or additional cost or expense occasioned thereby</p> <p>if and to the extent that such delay or non-performance is caused by the occurrence of an event of Force Majeure.</p> <p>37.6 If the performance of the Contract is substantially prevented, hindered or delayed for a single period of more than sixty (60) days or an aggregate period of more than one hundred and twenty (120) days on account of one or more events of Force Majeure during the currency of the Contract, the parties will attempt to develop a mutually satisfactory solution, failing which the dispute shall be resolved in accordance with GCC Clause 6.</p> <p>37.7 Notwithstanding GCC Sub-Clause 37.5, Force Majeure shall not apply to any obligation of the Employer to make payments to the Contractor herein.</p>
<p><b>38. War Risks</b></p>	<p>38.1 "War Risks" shall mean any of the following events occurring or existing in or near the country (or countries) where the Site is located:</p> <p>(a) war, hostilities or warlike operations (whether a state of war is declared or not), invasion, act of foreign enemy and civil war</p> <p>(b) rebellion, revolution, insurrection, mutiny, usurpation of civil or military government, conspiracy, riot, civil commotion and terrorist acts, and</p> <p>(c) any explosion or impact of any mine, bomb, shell, grenade or other projectile, missile, munitions or explosive of war.</p> <p>38.2 Notwithstanding anything contained in the Contract, the Contractor shall have no liability whatsoever for or with respect to</p> <p>(a) destruction of or damage to Facilities, Plant &amp; Equipment, or any part thereof</p> <p>(b) destruction of or damage to property of the Employer or any third party</p>
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	<p>(c) injury or loss of life</p> <p>if such destruction, damage, injury or loss of life is caused by any War Risks, and the Employer shall indemnify and hold the Contractor harmless from and against any and all claims, liabilities, actions, lawsuits, damages, costs, charges or expenses arising in consequence of or in connection with the same.</p> <p>38.3 If the Facilities or any Plant and Equipment or Contractor's Equipment or any other property of the Contractor used or intended to be used for the purposes of the Facilities shall sustain destruction or damage by reason of any War Risks, the Employer shall pay the Contractor for</p> <p>(a) any part of the Facilities or the Plant and Equipment so destroyed or damaged (to the extent not already paid for by the Employer)</p> <p>(b) replacing or making good any Contractor's Equipment or other property of the Contractor so destroyed or damaged so far as may be required by the Employer, and as may be necessary for completion of the Facilities,</p> <p>(c) replacing or making good any such destruction or damage to the Facilities or the Plant and Equipment or any part thereof.</p> <p>If the Employer does not require the Contractor to replace or make good any such destruction or damage to the Facilities, the Employer shall either request a change in accordance with GCC Clause 39 (Change in the Facilities), excluding the performance of that part of the Facilities thereby destroyed or damaged or, where the loss, destruction or damage affects a substantial part of the Facilities, shall terminate the Contract, pursuant to GCC Sub-Clause 42.1 (Termination for Employer's Convenience).</p> <p>38.4 Notwithstanding anything contained in the Contract, the Employer shall pay the Contractor for any increased costs or incidentals to the execution of the Contract that are in any way attributable to, consequent on, resulting from, or in any way connected with any War Risks, provided that the Contractor shall as soon as practicable notify the Employer in writing of any such increased cost.</p> <p>38.5 If during the performance of the Contract any War Risks shall occur that financially or otherwise materially affect the execution of the Contract by the Contractor, the Contractor shall use its reasonable efforts to execute the Contract with due and proper consideration given to the safety of its and its Subcontractors' personnel engaged in the work on the Facilities, provided, however, that if the execution of the work on the Facilities becomes impossible or is substantially prevented for a single period of more than sixty (60) days or an aggregate period of more than one hundred and twenty (120) days on account of any War Risks, the parties will attempt to develop a mutually satisfactory solution, failing which the dispute will be resolved in accordance with GCC Clause 6.</p> <p>38.6 In the event of termination pursuant to GCC Sub-Clauses 38.3, the rights and obligations of the Employer and the Contractor shall be specified in GCC Sub-Clauses 42.1.2 and 42.1.3, except that the Contractor shall have no entitlement to profit under paragraph (e) of GCC Sub-Clause 42.1.3 in respect of any unexecuted Facilities as of the date of termination.</p>
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<p style="text-align: center;"><b>H. Change in Contract Elements</b></p> <p><b>39. Change In The Facilities</b></p> <p style="padding-left: 40px;"><b>39.1 Introducing a Change</b></p> <p style="padding-left: 80px;">39.1.1 The Employer shall have the right to propose, and subsequently require, that the Project Manager order the Contractor from time to time during the performance of the Contract to make any change, modification, addition or deletion to, in or from the Facilities (hereinafter called "Change"), provided that such Change falls within the general scope of the Facilities and does not constitute unrelated work and that it is technically practicable, taking into account both the state of advancement of the Facilities and the technical compatibility of the Change envisaged with the nature of the Facilities as specified in the Contract .</p> <p style="padding-left: 80px;">39.1.2 The Contractor may from time to time during its performance of the Contract propose to the Employer (with a copy to the Project Manager) any Change that the Contractor considers necessary or desirable to improve the quality, efficiency or safety of the Facilities. The Employer may at its discretion approve or reject any Change proposed by the Contractor.</p> <p style="padding-left: 80px;">39.1.3 Notwithstanding GCC Sub-Clauses 39.1.1 and 39.1.2, no change made necessary because of any default of the Contractor in the performance of its obligations under the Contract shall be deemed to be a Change, and such change shall not result in any adjustment of the Contract Price or the Time for Completion.</p> <p style="padding-left: 80px;">39.1.4 The procedure on how to proceed with and execute Changes is specified in GCC Sub-Clauses 39.2 and 39.3.</p> <p style="padding-left: 40px;"><b>39.2 Changes Originating from Employer</b></p> <p style="padding-left: 80px;">39.2.1 If the Employer proposes a Change pursuant to GCC Sub-Clause 39.1.1, it shall send to the Contractor a "Request for Change Proposal," requiring the Contractor to prepare and furnish to the Project Manager as soon as reasonably practicable a "Change Proposal," which shall include the following:</p> <p style="padding-left: 120px;">(a) brief description of the Change</p> <p style="padding-left: 120px;">(b) effect on the Time for Completion</p> <p style="padding-left: 120px;">(c) estimated cost of the Change</p> <p style="padding-left: 120px;">(d) effect on Functional Guarantees (if any)</p> <p style="padding-left: 120px;">(e) effect on any other provisions of the Contract.</p>	

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	<p>39.2.2 The pricing of any change shall, as far as practicable, be calculated in accordance with the rates and prices included in the Contract. If the rates and prices of any change are not available in the Contract, the parties thereto shall agree on specific rates for the variation of the change.</p> <p>39.2.3 If before or during the preparation of the Change Proposal it becomes apparent that the aggregate effect of compliance therewith and with all other Change Orders that have already become binding upon the Contractor under this GCC Clause 39 would be to increase or decrease the Contract Price as originally set forth in Article 2 (Contract Price) of the Contract Agreement by more than fifteen (15) percent, the Contractor may give a written notice of objection thereto prior to furnishing the Change Proposal as aforesaid. If the Employer accepts the Contractor's objection, the Employer and the Contractor shall agree on specific rates for valuation of the change.</p> <p>39.2.4 Upon receipt of the Change Proposal, the Employer and the Contractor shall mutually agree upon all matters therein contained including agreement on rates if such rates are not available in the Contract or if the limit of 15% set forth in Clause 39.2.3 has been exceeded. Within fourteen (14) days after such agreement, the Employer shall, if it intends to proceed with the Change, issue the Contractor with a Change Order.</p> <p>If the Employer is unable to reach a decision within fourteen (14) days, it shall notify the Contractor with details of when the Contractor can expect a decision.</p> <p>If the Employer decides not to proceed with the Change for whatever reason, it shall, within the said period of fourteen (14) days, notify the Contractor accordingly.</p> <p>39.2.5 If the Employer and the Contractor cannot reach agreement on the price for the Change, an equitable adjustment to the Time for Completion, or any other matters identified in the Change Proposal, the Employer may nevertheless instruct the Contractor to proceed with the Change by issue of a "Pending Agreement Change Order."</p> <p>Upon receipt of a Pending Agreement Change Order, the Contractor shall immediately proceed with effecting the Changes covered by such Order. The parties shall thereafter attempt to reach agreement on the outstanding issues under the Change Proposal.</p> <p>If the parties cannot reach agreement within sixty (60) days from the date of issue of the Pending Agreement Change Order, then the matter may be referred to the Expert Settlement Council (ESC) in accordance with the provisions of GCC Sub-Clause 6.2.</p>
39.3	<p><b>Changes Originating from Contractor</b></p> <p>39.3.1 If the Contractor proposes a Change pursuant to GCC Sub-Clause 39.1.2, the Contractor shall submit to the Project Manager a written "Application for Change Proposal," giving</p>

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	<p>reasons for the proposed Change and including the information specified in GCC Sub-Clause 39.2.1.</p> <p>Upon receipt of the Application for Change Proposal, the parties shall follow the procedures outlined in GCC Sub-Clauses 39.2.4 and 39.2.5.</p> <p><b>40. Extension of Time for Completion</b></p> <p>40.1 The Time(s) for Completion specified in the SCC shall be extended if the Contractor is delayed or impeded in the performance of any of its obligations under the Contract by reason of any of the following:</p> <ul style="list-style-type: none"> <li>(a) any Change in the Facilities as provided in GCC Clause 39 (Change in the Facilities)</li> <li>(b) any occurrence of Force Majeure as provided in GCC Clause 37 (Force Majeure), unforeseen conditions as provided in GCC Clause 35 (Unforeseen Conditions), or other occurrence of any of the matters specified or referred to in paragraphs (a), (b) and (c) of GCC Sub-Clause 32.2</li> <li>(c) any suspension order given by the Employer under GCC Clause 41 (Suspension) hereof or reduction in the rate of progress pursuant to GCC Sub-Clause 41.2 or</li> <li>(d) any changes in laws and regulations as provided in GCC Clause 36 (Change in Laws and Regulations) or</li> <li>(e) any default or breach of the Contract by the Employer, specifically including failure to supply the items listed in Appendix 6 (Scope of Works and Supply by the Employer) to the Contract Agreement, or any activity, act or omission of any other contractors employed by the Employer or failure to give possession of site under GCC Clause 10.2.</li> <li>(f) any other matter specifically mentioned in the Contract;</li> </ul> <p>by such period as shall be fair and reasonable in all the circumstances and as shall fairly reflect the delay or impediment sustained by the Contractor.</p> <p>40.2 Except where otherwise specifically provided in the Contract, the Contractor shall submit to the Project Manager a notice of a claim for an extension of the Time for Completion, together with particulars of the event or circumstance justifying such extension as soon as reasonably practicable after the commencement of such event or circumstance. As soon as reasonably practicable after receipt of such notice and supporting particulars of the claim, the Employer and the Contractor shall agree upon the period of such extension. In the event that the Contractor does not accept the Employer's estimate of a fair and reasonable time extension, the Contractor shall be entitled to refer the matter to the Expert Settlement Council (ESC), pursuant to GCC Sub-Clause 6.2.</p> <p>40.3 The Contractor shall at all times use its reasonable efforts to minimize any delay in the performance of its obligations under the Contract.</p>
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	<p data-bbox="459 268 1138 296"><b>40.4 Documents for Consideration of Time Extension</b></p> <p data-bbox="602 327 1367 443">The following documents shall form the principal basis for consideration of Time Extension pursuant to GCC clause 40 with or without LD, levy of liquidated damages pursuant to GCC clause 26 and settlement of extra claims during the execution of contract:</p> <ol data-bbox="602 470 1367 617" style="list-style-type: none"> <li>1. The joint recordings in the weekly meetings register</li> <li>2. Records of Technical Coordination Meetings.</li> <li>3. Records of Contract Review meetings.</li> <li>4. Written notices issued by the "Project Manager" or his authorized representative to Contractor in the relevant period.</li> </ol> <p data-bbox="220 653 420 680"><b>41. Suspension</b></p> <p data-bbox="459 716 1367 947"><b>41.1</b> The Employer/ Project Manager may, by notice to the Contractor, order the Contractor to suspend performance of any or all of its obligations under the Contract. Such notice shall specify the obligation of which performance is to be suspended, the effective date of the suspension and the reasons therefor. The Contractor shall thereupon suspend performance of such obligation (except those obligations necessary for the care or preservation of the Facilities) until ordered in writing to resume such performance by the Project Manager/ Employer.</p> <p data-bbox="557 978 1367 1293">If, by virtue of a suspension order given by the Project Manager/Employer, other than by reason of the Contractor's default or breach of the Contract, the Contractor's performance of any of its obligations is suspended for an aggregate period of more than ninety (90) days, then at any time thereafter and provided that at that time such performance is still suspended, the Contractor may give a notice to the Project Manager requiring that the Employer shall, within twenty-eight (28) days of receipt of the notice, order the resumption of such performance or request and subsequently order a change in accordance with GCC Clause 39 (Change in the Facilities), excluding the performance of the suspended obligations from the Contract.</p> <p data-bbox="557 1325 1367 1493">If the Employer fails to do so within such period, the Contractor may, by a further notice to the Project Manager, elect to treat the suspension, where it affects a part only of the Facilities, as a deletion of such part in accordance with GCC Clause 39 (Change in the Facilities) or, where it affects the whole of the Facilities, as termination of the Contract under GCC Sub-Clause 42.1 (Termination for Employer's Convenience).</p> <p data-bbox="459 1528 1367 1877"><b>41.2</b> If</p> <ol style="list-style-type: none"> <li data-bbox="557 1587 1367 1877">(a) the Employer has failed to pay the Contractor any sum due under the Contract within the specified period, has failed to approve any invoice or supporting documents without just cause pursuant to Appendix 1 (Terms and Procedures of Payment) to the Contract Agreement, or commits a substantial breach of the Contract, the Contractor may give a notice to the Employer that requires payment of such sum, requires approval of such invoice or supporting documents, or specifies the breach and requires the Employer to remedy the same, as the case may be. If the Employer fails to pay such sum, fails to approve such invoice or</li> </ol>
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	<p>supporting documents or give its reasons for withholding such approval, or fails to remedy the breach or take steps to remedy the breach within fourteen (14) days after receipt of the Contractor's notice or</p> <p>(b) the Contractor is unable to carry out any of its obligations under the Contract for any reason attributable to the Employer, including but not limited to the Employer's failure to provide possession of or access to the Site or other areas in accordance with GCC Sub-Clause 10.2, or failure to obtain any governmental permit necessary for the execution and/or completion of the Facilities;</p> <p>then the Contractor may by fourteen (14) days' notice to the Employer suspend performance of all or any of its obligations under the Contract, or reduce the rate of progress.</p> <p>41.3 If the Contractor's performance of its obligations is suspended or the rate of progress is reduced pursuant to this GCC Clause 41, then the Time for Completion shall be extended in accordance with GCC Sub-Clause 40.1, and any and all additional costs or expenses incurred by the Contractor as a result of such suspension or reduction shall be paid by the Employer to the Contractor in addition to the Contract Price, except in the case of suspension or reduction in the rate of progress by reason of the Contractor's default or breach of the Contract.</p> <p>41.4 During the period of suspension, the Contractor shall not remove from the Site any Plant and Equipment, any part of the Facilities or any Contractor's Equipment, without the prior written consent of the Employer.</p>
42. <b>Termination</b>	<p>42.1 <b>Termination for Employer's Convenience</b></p> <p>42.1.1 The Employer may at any time terminate the Contract for any reason by giving the Contractor a notice of termination that refers to this GCC Sub-Clause 42.1.</p> <p>42.1.2 Upon receipt of the notice of termination under GCC Sub-Clause 42.1.1, the Contractor shall either immediately or upon the date specified in the notice of termination</p> <p>(a) cease all further work, except for such work as the Employer may specify in the notice of termination for the sole purpose of protecting that part of the Facilities already executed, or any work required to leave the Site in a clean and safe condition</p> <p>(b) terminate all subcontracts, except those to be assigned to the Employer pursuant to paragraph (d)(ii) below</p> <p>(c) remove all Contractor's Equipment from the Site, repatriate the Contractor's and its Subcontractors' personnel from the Site, remove from the Site any wreckage, rubbish and debris of any kind, and leave the whole of the Site in a clean and safe condition</p>
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	<p>(d) In addition, the Contractor, subject to the payment specified in GCC Sub-Clause 42.1.3, shall</p> <ul style="list-style-type: none"> <li>(i) deliver to the Employer the parts of the Facilities executed by the Contractor up to the date of termination</li> <li>(ii) to the extent legally possible, assign to the Employer all right, title and benefit of the Contractor to the Facilities and to the Plant and Equipment as at the date of termination, and, as may be required by the Employer, in any subcontracts concluded between the Contractor and its Subcontractors</li> <li>(iii) deliver to the Employer all non-proprietary drawings, specifications and other documents prepared by the Contractor or its Subcontractors as at the date of termination in connection with the Facilities.</li> </ul> <p>42.1.3 In the event of termination of the Contract under GCC Sub-Clause 42.1.1, the Employer shall pay to the Contractor the following amounts:</p> <ul style="list-style-type: none"> <li>(a) the Contract Price, properly attributable to the parts of the Facilities executed by the Contractor as of the date of termination</li> <li>(b) the costs reasonably incurred by the Contractor in the removal of the Contractor's Equipment from the Site and in the repatriation of the Contractor's and its Subcontractors' personnel</li> <li>(c) any amounts to be paid by the Contractor to its Subcontractors in connection with the termination of any subcontracts, including any cancellation charges</li> <li>(d) costs incurred by the Contractor in protecting the Facilities and leaving the Site in a clean and safe condition pursuant to paragraph (a) of GCC Sub-Clause 42.1.2</li> <li>(e) the cost of satisfying all other obligations, commitments and claims that the Contractor may in good faith have undertaken with third parties in connection with the Contract and that are not covered by paragraphs (a) through (d) above.</li> </ul> <p>42.2 <b>Termination for Contractor's Default</b></p> <p>42.2.1 The Employer, without prejudice to any other rights or remedies it may possess, may terminate the Contract forthwith in the following circumstances by giving a notice of termination and its reasons therefor to the Contractor, referring to this GCC Sub-Clause 42.2:</p> <ul style="list-style-type: none"> <li>(a) if the Contractor becomes bankrupt or insolvent, has a receiving order issued against it, compounds with its creditors, or, if the Contractor is a corporation, a resolution is</li> </ul>
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	<p>passed or order is made for its winding up (other than a voluntary liquidation for the purposes of amalgamation or reconstruction), a receiver is appointed over any part of its undertaking or assets, or if the Contractor takes or suffers any other analogous action in consequence of debt</p> <p>(b) if the Contractor assigns or transfers the Contract or any right or interest therein in violation of the provision of GCC Clause 43 (Assignment).</p> <p>(c) if the Contractor, in the judgement of the Employer has engaged in corrupt or fraudulent practices in competing for or in executing the Contract.</p> <p>For the purpose of this Sub-Clause :</p> <p>"corrupt practice" means the offering, giving, receiving or soliciting of anything of value to influence the action of a public official in the procurement process or in contract execution.</p> <p>"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.</p> <p>42.2.2 If the Contractor</p> <p>(a) has abandoned or repudiated the Contract</p> <p>(b) has without valid reason failed to commence work on the Facilities promptly or has suspended (other than pursuant to GCC Sub-Clause 41.2) the progress of Contract performance for more than twenty-eight (28) days after receiving a written instruction from the Employer to proceed</p> <p>(c) persistently fails to execute the Contract in accordance with the Contract or persistently neglects to carry out its obligations under the Contract without just cause</p> <p>(d) refuses or is unable to provide sufficient materials, services or labour to execute and complete the Facilities in the manner specified in the program furnished under GCC Clause 18 (Program of Performance) at rates of progress that give reasonable assurance to the Employer that the Contractor can attain Completion of the Facilities by the Time for Completion as extended</p> <p>then the Employer may, without prejudice to any other rights it may possess under the Contract, give a notice to the Contractor stating the nature of the default and requiring the Contractor to remedy the same. If the Contractor fails to remedy or to take steps to remedy the same within fourteen (14) days of its receipt of such notice, then the Employer may terminate the Contract forthwith by giving a notice of</p>

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	<p>termination to the Contractor that refers to this GCC Sub-Clause 42.2.</p> <p>42.2.3 Upon receipt of the notice of termination under GCC Sub-Clauses 42.2.1 or 42.2.2, the Contractor shall, either immediately or upon such date as is specified in the notice of termination,</p> <ul style="list-style-type: none"> <li>(a) cease all further work, except for such work as the Employer may specify in the notice of termination for the sole purpose of protecting that part of the Facilities already executed, or any work required to leave the Site in a clean and safe condition</li> <li>(b) terminate all subcontracts, except those to be assigned to the Employer pursuant to paragraph (d) below</li> <li>(c) deliver to the Employer the parts of the Facilities executed by the Contractor up to the date of termination</li> <li>(d) to the extent legally possible, assign to the Employer all right, title and benefit of the Contractor to the Works and to the Plant and Equipment as at the date of termination, and, as may be required by the Employer, in any subcontracts concluded between the Contractor and its Subcontractors</li> <li>(e) deliver to the Employer all drawings, specifications and other documents prepared by the Contractor or its Subcontractors as at the date of termination in connection with the Facilities.</li> </ul> <p>42.2.4 The Employer may enter upon the Site, expel the Contractor, and complete the Facilities itself or by employing any third party. The Employer may, to the exclusion of any right of the Contractor over the same, take over and use with the payment of a fair rental rate to the Contractor, with all the maintenance costs to the account of the Employer and with an indemnification by the Employer for all liability including damage or injury to persons arising out of the Employer's use of such equipment, any Contractor's Equipment owned by the Contractor and on the Site in connection with the Facilities for such reasonable period as the Employer considers expedient for the supply and installation of the Facilities.</p> <p>Upon completion of the Facilities or at such earlier date as the Employer thinks appropriate, the Employer shall give notice to the Contractor that such Contractor's Equipment will be returned to the Contractor at or near the Site and shall return such Contractor's Equipment to the Contractor in accordance with such notice. The Contractor shall thereafter without delay and at its cost remove or arrange removal of the same from the Site.</p> <p>42.2.5 Subject to GCC Sub-Clause 42.2.6, the Contractor shall be entitled to be paid the Contract Price attributable to the Facilities executed as at the date of termination, the value of any unused or partially used Plant and Equipment on the Site, and the costs, if any, incurred in protecting the Facilities and in leaving the Site in a clean and safe condition pursuant to paragraph (a) of GCC</p>
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	<p>Sub-Clause 42.2.3. Any sums due to the Employer from the Contractor accruing prior to the date of termination shall be deducted from the amount to be paid to the Contractor under this Contract.</p> <p>42.2.6 If the Employer completes the Facilities, the cost of completing the Facilities by the Employer shall be determined.</p> <p>If the sum that the Contractor is entitled to be paid, pursuant to GCC Sub-Clause 42.2.5, plus the reasonable costs incurred by the Employer in completing the Facilities, exceeds the Contract Price, the Contractor shall be liable for such excess.</p> <p>If such excess is greater than the sums due to the Contractor under GCC Sub-Clause 42.2.5, the Contractor shall pay the balance to the Employer, and if such excess is less than the sums due to the Contractor under GCC Sub-Clause 42.2.5, the Employer shall pay the balance to the Contractor.</p> <p>The Employer and the Contractor shall agree, in writing, on the computation described above and the manner in which any sums shall be paid.</p> <p>42.3 <b>Termination by Contractor</b></p> <p>42.3.1 If</p> <p>(a) the Employer has failed to pay the Contractor any sum due under the Contract within the specified period, has failed to approve any invoice or supporting documents without just cause pursuant to Appendix 1 (Terms and Procedures of Payment) of the Contract Agreement, or commits a substantial breach of the Contract, the Contractor may give a notice to the Employer that requires payment of such sum, requires approval of such invoice or supporting documents, or specifies the breach and requires the Employer to remedy the same, as the case may be. If the Employer fails to pay such sum, fails to approve such invoice or supporting documents or give its reasons for withholding such approval, fails to remedy the breach or take steps to remedy the breach within fourteen (14) days after receipt of the Contractor's notice, or</p> <p>(b) the Contractor is unable to carry out any of its obligations under the Contract for any reason attributable to the Employer, including but not limited to the Employer's failure to provide possession of or access to the Site or other areas or failure to obtain any governmental permit necessary for the execution and/or completion of the Facilities which the Employer is required to obtain as per provision of the Contract or as per relevant applicable laws of the country,</p> <p>then the Contractor may give a notice to the Employer thereof, and if the Employer has failed to pay the outstanding sum, to approve the invoice or supporting documents, to give its reasons for withholding such approval, or to remedy the breach within twenty-eight (28) days of such notice, or if the Contractor is still</p>
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	<p>unable to carry out any of its obligations under the Contract for any reason attributable to the Employer within twenty-eight (28) days of the said notice, the Contractor may by a further notice to the Employer referring to this GCC Sub-Clause 42.3.1, forthwith terminate the Contract.</p> <p>42.3.2 The Contractor may terminate the Contract forthwith by giving a notice to the Employer to that effect, referring to this GCC Sub-Clause 42.3.2, if the Employer becomes bankrupt or insolvent, has a receiving order issued against it, compounds with its creditors, or, being a corporation, if a resolution is passed or order is made for its winding up (other than a voluntary liquidation for the purposes of amalgamation or reconstruction), a receiver is appointed over any part of its undertaking or assets, or if the Employer takes or suffers any other analogous action in consequence of debt.</p> <p>42.3.3 If the Contract is terminated under GCC Sub-Clauses 42.3.1 or 42.3.2, then the Contractor shall immediately</p> <ul style="list-style-type: none"> <li>(a) cease all further work, except for such work as may be necessary for the purpose of protecting that part of the Facilities already executed, or any work required to leave the Site in a clean and safe condition</li> <li>(b) terminate all subcontracts, except those to be assigned to the Employer pursuant to paragraph (d)(ii)</li> <li>(c) remove all Contractor's Equipment from the Site and repatriate the Contractor's and its Subcontractor's personnel from the Site</li> <li>(d) In addition, the Contractor, subject to the payment specified in GCC Sub-Clause 42.3.4, shall <ul style="list-style-type: none"> <li>(i) deliver to the Employer the parts of the Facilities executed by the Contractor up to the date of termination</li> <li>(ii) to the extent legally possible, assign to the Employer all right, title and benefit of the Contractor to the Facilities and to the Plant and Equipment as of the date of termination, and, as may be required by the Employer, in any subcontracts concluded between the Contractor and its Subcontractors</li> <li>(iii) deliver to the Employer all drawings, specifications and other documents prepared by the Contractor or its Subcontractors as of the date of termination in connection with the Facilities.</li> </ul> </li> </ul> <p>42.3.4 If the Contract is terminated under GCC Sub-Clauses 42.3.1 or 42.3.2, the Employer shall pay to the Contractor all payments specified in GCC Sub-Clause 42.1.3 and reasonable compensation for all loss or damage sustained by the Contractor arising out of, in connection with or in consequence of such termination.</p>

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	<p>42.3.5 Termination by the Contractor pursuant to this GCC Sub-Clause 42.3 is without prejudice to any other rights or remedies of the Contractor that may be exercised in lieu of or in addition to rights conferred by GCC Sub-Clause 42.3.</p> <p>42.4 In this GCC Clause 42, the expression "Facilities executed" shall include all work executed, Installation Services provided, any or all Plant and Equipment acquired (or subject to a legally binding obligation to purchase) by the Contractor and used or intended to be used for the purpose of the Facilities, up to and including the date of termination.</p> <p>42.5 In this GCC Clause 42, in calculating any monies due from the Employer to the Contractor, account shall be taken of any sum previously paid by the Employer to the Contractor under the Contract, including any advance payment paid pursuant to Appendix 1 (Terms and Procedures of Payment) to the Contract Agreement.</p>
43. <b>Assignment</b>	<p>43.1 The Contractor shall not, without the express prior written consent of the Employer, assign to any third party the Contract or any part thereof, or any right, benefit, obligation or interest therein or thereunder, except that the Contractor shall be entitled to assign either absolutely or by way of charge any monies due and payable to it or that may become due and payable to it under the Contract.</p>
44. <b>Contractor Performance Feedback and Evaluation System</b>	<p>The Employer has in place an established 'Contractor Performance and Feedback System' against which the Contractor's performance during the execution of Contract shall be evaluated on a continuous basis at regular intervals. In case the performance of the Contractor is found unsatisfactory on any of the following four parameters, the Contractor shall be considered ineligible for participating in future tenders for two years.</p> <ul style="list-style-type: none"> <li>* Financial Status</li> <li>* Project Execution and Project Management Capability.</li> <li>* Engineering &amp; QA Capability</li> <li>* Claims &amp; Disputes</li> </ul> <p>On completion of above ineligibility period, the Contractor would be required to submit a request to NTPC for participating in future tenders specifying the measures taken to improve their performance. On receipt of such request, the performance of contractor shall be assessed/ re-evaluated by NTPC and if the performance is found to be satisfactory, the Contractor shall be considered eligible for participation in future tenders.</p>
45. <b>Fraud Prevention Policy</b>	<p>"The contractor along with their associate / collaborator / subcontractors / sub-vendors / consultants / service providers shall strictly adhere to the Fraud Prevention policy of the Employer displayed on its tender website <a href="http://www.ntpctender.com">http://www.ntpctender.com</a>. The Contractor along with their associate /</p>
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Clause No.	GENERAL CONDITIONS OF CONTRACT (GCC)
<p>46.</p> <p><b>Withholding/ Banning</b></p>	<p>collaborator / subcontractors / sub-vendors / consultants / service providers shall observe the highest standard of ethics and shall not indulge or allow anybody else working in their organization to indulge in fraudulent activities during execution of the contract. The contractor shall immediately apprise the Employer about any fraud or suspected fraud as soon as it comes to their notice.</p> <p>The Employer has in place a Policy for withholding and Banning of Business Dealings as enclosed at Annexure-II to Special Conditions of Contract (SCC) of the Bidding Documents. Business dealings may be withheld or banned with the Contractor on account of any Default by the Contractor under GCC Clause 42.2.1 &amp; 42.2.2 or any of the grounds as detailed in the said Banning Policy.</p>

**PERFORMANCE REPORT OF CONTRACTOR**

**GUIDELINES FOR FILLING THE FORMAT**

- 1.0 The feedback shall be based on records, evidences and documents (hindrance register, DPR, monthly PRT MoM, contractor's MPR, etc). Due diligence shall be taken to capture the actual progress, hindrances, if any from the monthly progress report to be submitted by the concerned agency. As Daily Progress Report / Weekly Progress Report / Monthly Progress Report are key documents / inputs for Vendor Performance measurement. Non-submission of the aforesaid documents may also be reckoned as poor performance.
- 2.0 For measurement of contractor performance in various activities in supply, site execution etc, the Contractor shall submit quantified L-2 schedule within 3 months after scheduled completion of Basic Engg or 180 days from date of award, whichever is earlier. Based on the progress of detailed Engg, quantified L-2 shall be updated as and when required.
- 3.0 This vendor performance rating system is applicable for a particular package being executed by the vendor. If the same vendor is executing multiple packages in a project or at number of NTPC projects, the performance report shall be prepared package wise and the screening committee may then take a final view for evaluating the overall performance of the vendor before initiating action for issuance of Notice for Withholding of business dealings with the concerned contractor, in case the performance is found unsatisfactory.

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**FORMAT FOR ENGG & QA SCORE**  
**(TO BE FILLED IN BY NTPC ENGG.)**

S.No.	Parameters	Max Score (A)	Act % age w.r.t. sch (B)	Marks obtained (C) = (A)x(B)
(i)	%age of “ <b>Approval</b> ” category drgs/ docs submitted within submission schedule.	30		
(ii)	%age of “ <b>Information</b> ” category drgs/ docs submitted within submission schedule.	20		
(iii)	%age of drgs/docs approved within approval schedule (in Cat-I/IV)*	20		
(iv)	%age of drgs/docs approved within approval schedule (in Cat-II/IVR)*	20		
(v)	%age of Sub-vendor proposal for items identified in “DR” category & submitted within agreed schedule (i.e. 3 months prior to schedule date of ordering identified in L2)**	10		
	<b>TOTAL</b>	<b>100</b>		

\* For (iii) & (iv) above - If all drawings/documents due for approval are approved in Cat-I/IV within approval schedule, then marks allocated against (iii) & (iv) above shall be clubbed for calculation purpose.

\*\* In case no “DR” proposal is submitted and orders are placed on already approved vendors, then full marks shall be given for calculation purpose against item (v).

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### **FORMAT FOR FINANCE SCORE**

**(TO BE FILLED IN BY NTPC PP&M PRT COORDINATOR ON MONTHLY BASIS DURING PRT MEETING. BASED ON DETAILS TO BE FURNISHED BY NTPC SITE P&S)**

S. no	Parameters	Max Score (A)	% Rating (B)	Marks Obtained (C) = (A) *(B)
(i)	Number of instances NTPC has to issue Comfort letters to sub-vendors for getting supplies.	25		
(ii)	Number of instances vendor has requested for advance against BG from NTPC (beyond contractual provision)	25		
(iii)	Number of instances of supply delay beyond 1 month after issuance of MDCC.	25		
(iv)	Number of instances of direct supply / diversion of materials / consumables by NTPC.	25		
	<b>TOTAL</b>	<b>100</b>		

\*Performance to be captured by NTPC PP&M PRT Coordinator on monthly basis during PRT Meeting, based on details to be furnished by site P&S.

\*(No instances = 100%

Up to 1 instance = 50%

more than 1 instances = 0%).

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### **FORMAT FOR SUPPLY SCORE**

**(TO BE FILLED IN BY NTPC CONTRACTS)**

S. no	Parameters	Max Score (A)	Actual % w.r.t. L2 schedule (B)	Marks Obtained (C) = (A) *(B)
(i)	Ordering of Bought out items as per approved L2 network*			
	Major Bought out items	20		
	Minor Bought out items	5		
	Number of instances of cancellation / changes of Bol orders (No instances = 100% Up to 1 instances = 50% more than 1 instances = 0%).	10		
(ii)	Supply of Main Equipment per approved L2 network	60		
(iii)	Supply of Mandatory spares as per approved L2 network	5		
	<b>TOTAL</b>	<b>100</b>		

\*If Major & Minor Bought out items are not separately identified in L-2 network then both shall be clubbed into single line item with Max score of 25.

**Note: Overall % of actual progress vis-à-vis L2 schedule in Col (B) shall be arrived in the following manner:**

- (i) Let there be n type of Items/systems identified in L2/Quantified L2 schedule i.e. E1, E2, E3 .....En.
- (ii) Let % progress for each type of Item/system vis-à-vis L2 schedule be %E1, %E2, %E3.....%En.
- (iii) Overall % in Col (B) = (%E1+ %E2+ %E3.....+%En)/n

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**FORMAT FOR CONSTRUCTION/INSTALLATION SCORE**

**(TO BE FILLED IN BY NTPC SITE)**

S. no	Parameters	Max Score (A)	% of actual vis-à-vis L2 schedule (B)	Marks Obtained (C)=(A) *(B)
(i)	<b>Physical progress</b> i.e. Installation of equipment / item, Civil works (i.e. Excavation, RCC, Piling, etc), Structural Works (i.e. Structural Fabrication, Erection, etc) as per approved L2 network	95		
(ii)	Project Management Capability and resource Management by Vendor at site. <b>(5 Negative marks per instance)</b>			
	Number of instances of delay due to inadequate deployment of equipment and T&P, based on record maintained in hindrance register, monthly PRT MoM, contractor's MPR, etc.	(-5)		
	Number of instances of direct payment by NTPC to Contractor's sub-vendors to expedite supplies / services / the progress of work at site affected due to strike / delay in payments to labourers.	(-5)		
(iii)	Submission of Monthly Report in specified formats.	5		
	<b>TOTAL</b>	<b>100</b>		

**Details of Area-wise performance is mentioned below:**

Sr No.	Activities	Scope	L2 Finish Date	Actual Completed till L2 Finish	%age Comp
1	Excavation				
2	RCC				
3	Structural / Equipment Erection				
				<b>Avg Comp %</b>	

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**Note: For Physical Progress, overall % of actual progress vis-à-vis quantified L2 schedule in Col (B) shall be arrived in the following manner (Unit of measurement shall be as per approved BBU for respective activities):**

- (i) Let there be n category of works identified in L-2/Quantified L2 schedule i.e. W1, W2, W3 .....Wn.
- (ii) Let % progress for each category of work vis-à-vis L2 schedule be %W1, %W2, %W3.....%Wn.
- (iii) Overall %in Col (B) = (%W1+ %W2+ %W3.....+%Wn)/n

Note:

- All incidences shall be relevant to the current performance evaluation cycle.
- In case of delay in front (including construction drawings for civil packages and other inputs, if any) release by NTPC, measurement of delay in execution by the contractor shall be normalized proportionally.
- Contractor will have to submit monthly progress report capturing actual physical progress viv-a-vis L2 schedule and delay in hand over of front by NTPC, if any. In case of front delay the same has to be jointly signed by NTPC engineer & Vendor.

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### FORMAT FOR QUALITY SCORE

**(TO BE FILLED IN BY NTPC SITE)**

S. no	Parameters	Max Score (A)	% Rating (B)	Marks Obtained (C)=(A) *(B)
(i)	Availability of Testing facilities (Available as per contractual requirement – 100% Not available – 0%)	25		
(ii)	Preventing recurrence of defects/complaints (up to 5 cases – 100%, Up to 10 cases – 40%, more than 10 cases – 0%)	25		
(iii)	Proper Storage & Preservation of Equipment/Material (Nil violation – 100%, Up to 1 case of violation – 40%, more than 1 cases of violation – 0%)	25		
(iv)	Deployment of Qualified Quality Officers/Manpower as per Contract (% deployment w.r.t. contractual requirement)	25		
	<b>TOTAL</b>	<b>100</b>		

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**FORMAT FOR SAFETY SCORE**

**(TO BE FILLED IN BY NTPC SITE)**

S. no	Parameters	Max Score (A)	% Rating (B)	Marks Obtained (C)=(A) *(B)
(i)	Having safety policy and approved Safety Assurance Plan (available as per requirement – 100%, Not-available – 0%)	10		
(ii)	Violation of safety requirement as per Safety Assurance Plan. (0 violation = 100% Upto 3 violations = 50% more than 3 = 0%)	20		
(iii)	No. of incidence of Fatal accidents due to contractor's negligence (0 incidence = 100% 1 incidence = 50% more than 1 cases, or multiple fatalities in one instance = 0%)	50		
(iv)	No. of incidence of Non-Fatal accidents due to contractor's negligence (0 incidence = 100% Up to 5 incidence = 50% more than 5 = 0%)	10		
(v)	Deployment of Qualified Safety Officers as per contract (% deployment w.r.t. contractual requirement)	10		
	<b>TOTAL</b>	<b>100</b>		

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### **FORMAT FOR CLAIMS & DISPUTE SCORE**

#### **(TO BE FILLED IN BY NTPC SITE)**

S. no	Parameters	Max Score (A)	% Rating (B)	Marks Obtained (C)=(A) *(B)
(i)	No. of cases where Contractor stopped work on account of non-admittance/non settlement of claims (No case = 100% Upto 3 cases = 50% more than 3 cases = 0%)	70		
(ii)	No. of arbitration/legal cases resorted to by the Contractor (No case – 100%, otherwise 0%)	30		
	<b>TOTAL</b>	<b>100</b>		

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### Overall Performance Evaluation

S.No.	Parameters	Max Score (A)	Score Obtained (B)	Weightage (C)	Max Weighted Score (D) = (A)*(C)	Weighted Score obtained (E) = (B)*(C)
(i)	Engineering & QA	100		0.20	20	
(ii)	Finance	100		0.20	20	
(iii)	Supply	100		0.20	20	
(iv)	Construction/Installation	100		0.20	20	
(v)	Quality	100		0.05	05	
(vi)	Safety	100		0.10	10	
	Claims & Disputes	100		0.05	05	
	<b>Total</b>			<b>1.00</b>	<b>100</b>	

**Note: In case of Civil Contracts, score of Engineering & QA and Supply shall be NIL and weightage of Construction/Installation shall be 0.60.**

### Performance Rating

Total Weighted Score obtained	Performance Grade
Upto 50	Unsatisfactory
>50 to 70	Satisfactory
>70 to 80	Good
>80	Excellent