

VOLUME-III
SECTION - 8
GENERAL CONDITIONS

General Conditions shall be those forming part of the “Conditions of Contract for EPC / Turnkey Projects” (First Edition - 1999) published by the Fédération Internationale des Ingénieurs-Conseils (FIDIC) amended by the ERRATA to the First Edition - 1999.

A copy of the FIDIC “Conditions of Contract for EPC / Turnkey Projects”, First Edition, 1999 may be obtained from:

FIDIC – P.O. Box 86,
1000 Lausanne 12,
Switzerland
Phone No. +41 21 653 50 03
Fax No. +41 21 653 54 32

VOLUME-III
SECTION 9
PARTICULAR CONDITIONS (PC)

SECTION 9: PARTICULAR CONDITIONS (PC)

The following “Particular Conditions” include amendments and additions to Section 8: General Conditions. The General Conditions are incorporated herein by reference only and are not set out at length. The Contractor is deemed to have obtained for himself and read and fully understood the General Conditions in their entirety. The following Particular Conditions shall supplement the Section 8: General Conditions. Whenever there is a conflict, the provisions herein shall prevail over those in the Section 8: General Conditions

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| Sub-Clause 1.1.1.1 Contract | <i>Insert the words “Pre-Contract Integrity Pact,”</i> between the word “means” and “the” in the first line of the Sub-Clause. |
| Sub-Clause 1.1.1.3 Employer’s Requirements | <i>Replace the last sentence with the following;</i> “The said document shall consist of Conditions of Contract, Employer’s Requirements, General Information, Design Criteria, Engineering Design, General Requirements, Field Surveys & Investigations, Specifications, Drawings, Quality Assurance.” |
| Sub-Clause 1.1.1.6 Appendix to Tender | <i>Add new Sub-Clause 1.1.1.6 as follows:</i> “ Appendix to Tender ” means the pages completed by the Employer and titled as ‘Appendix to Tender’ |
| Sub-Clause 1.1.1.7 Pre-Contract Integrity Pact | <i>Add new Sub-Clause 1.1.1.7 as follows:</i> “ Pre-Contract Integrity Pact ” (hereinafter referred to as “Integrity Pact”) means the pact/agreement entered into between the Parties, if any, to avoid all forms of corruption by following a system that is fair, transparent and free from any influence/prejudiced dealings.” |
| Sub-Clause 1.1.2.2 Employer | <i>Modify the definition of the Employer as under:</i> “ Employer ” means The Cochin Port Trust, represented by The Chief Engineer, The Cochin Port Trust, Willingdon Island, Kochi - 682009 On behalf of Indian Navy and CoPT and the legal successors thereto. Cochin Port Trust shall co-ordinate the Project on behalf of both Indian Navy and CoPT. |
| Sub-Clause 1.1.2.3 Contractor | <i>Modify the definition of the Contractor as under;</i> “ Contractor ” means the person(s); (i) to whom the Letter of Award has been issued by the Employer or (ii) named as Contractor in the Contract Agreement and any subsequent changes thereto and the legal successors in title to this person(s). |
| Sub-Clause 1.1.3.2 Commencement Date | <i>Replace the Sub-Clause with the following;</i> “ Commencement Date ” means 07 th day after the date of issue of ‘Letter of Award’ by the Employer to the Contractor. |
| Sub-Clause 1.1.3.3 | <i>Replace the Sub-Clause with the following;</i> |

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| Time for Completion | <p>“Time for Completion” means the time for completing the Works under Sub-Clause 8.2 [Time for Completion], as stated in the Conditions (with any extension under Sub-Clause 8.4 [Extension of Time for Completion]), determined by the Employer from the Commencement Date.</p> |
| Sub-Clause 1.1.3.7 Defects Notification Period | <p><i>Replace the Sub-Clause with the following;</i></p> <p>“Defects Notification Period” means the period for notifying defects in the Works under Sub-Clause 11.1 [Completion of Outstanding Work and Remedying Defects] with any extension under Sub-Clause 11.3 [Extension of Defects Notification Period], calculated from the date on which the Works are completed as certified under Sub-Clause 10.1 [Taking Over of the Works].</p> |
| Sub-Clause 1.1.3.9 | <p><i>Substitute in Sub-Clause 1.1.3.9, the words “365 days” with “Gregorian Calendar year”</i></p> |
| Sub-Clause 1.1.3.10 | <p><i>Add new Sub-Clause 1.1.3.10</i></p> <p>“Milestone” means the completion of a part of the Works, or the occurrence of an identified event.</p> |
| Sub-Clause 1.1.3.11 | <p><i>Add new Sub-Clause 1.1.3.11</i></p> <p>“Stage” means the part of the Works identified as such and more particularly described in the Schedule of Payments in Section 5.</p> |
| Sub-Clause 1.1.3.12 | <p><i>Add new Sub-Clause 1.1.3.12:</i></p> <p>“Reference to Period” means period commencing ‘from’ a specified day or date and ‘till’ or ‘until’ a specified day or date shall include both such days and dates.</p> |
| Sub-Clause 1.1.4.2 Cost | <p><i>Replace the Sub-Clause with the following;</i></p> <p>“Cost” means all expenditure reasonably incurred by the Contractor, on Site, but does not include overhead towards owned resources including men, materials, equipment etc., and profit.</p> |
| Sub-Clause 1.1.4.5 Local Currency | <p><i>Substitute the Sub-Clause 1.1.4.5 with the following:</i></p> <p>“Local Currency” means Indian Rupees (INR).</p> |
| Sub-Clause 1.1.5.5 Plant | <p><i>Insert the following after the last word ‘Works’:</i></p> <p>“, including vehicles purchased for the Employer and relating to the construction or operation of the Works.</p> |
| Sub-Clause 1.1.5.6 Section | <p><i>Delete the Sub-clause;</i></p> |

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| <p>Sub-Clause 1.1.6.3 Employer's Equipment</p> | <p><i>Delete the Sub-clause;</i></p> |
| <p>Sub-Clause 1.1.6.5 Laws</p> | <p><i>Add the words "of India" at the end.</i></p> |
| <p>Sub-Clause 1.1.6.8 Variation</p> | <p><i>Delete the Sub-Clause 1.1.6.8 and substitute with the following:</i></p> <p>"Variation means any change to the Employer's Requirements with reference to change in scope of Works, design criteria & specifications and criteria for the testing & performance of the completed Works specified in the Employer's Requirements or the Works, which is instructed or approved as a variation under clause 13 [Variations and Adjustment]."</p> |
| <p>Sub-Clause 1.1.6.9 General Clauses Act 1897</p> | <p><i>Add the following new Sub-Clause 1.1.6.9:</i></p> <p>"Any word or expression used in this Contract shall, unless otherwise defined or construed in this Contract, bears its ordinary English meaning and, for these purposes, the General Clauses Act 1897 shall not apply."</p> |
| <p>Sub-Clause 1.2 Interpretation</p> | <p><i>Insert the following sub-paragraphs after sub-paragraph (d):</i></p> <p>"(e) the word "Tender" is synonymous with "Bid", and "Tenderer" with "Bidder" and the words "Tender Documents" with "Bidding Documents".</p> <p>(f) In these Conditions, provisions including the expression 'Cost plus reasonable profit' require this profit to be one-twentieth (5%) of this Cost unless otherwise indicated in the Appendix to Tender."</p> |
| <p>Sub-Clause 1.3 Communications</p> | <p><i>Add the following at the end of Sub-Clause 1.3:</i></p> <p>"In this Contract, unless the context otherwise requires, any contract, consent, approval, authorisation, notice, communication, information or report required under or pursuant to this Contract from or by any Party shall be valid and effective only if it is in writing under the hand of a duly authorised representative of such Party, in this behalf and not otherwise."</p> |
| <p>Sub-Clause 1.4 Law and Language</p> | <p><i>Replace the Sub-Clause with the following;</i></p> <p>a) The Contract shall be governed by the laws of India. Any legal dispute under this Contract shall be subjected exclusively to the jurisdiction of court of law at Kochi, India.</p> <p>b) The Contract shall be in the English Language and all communication shall be in the same language i.e. English.</p> |
| <p>Sub-Clause 1.5 Priority of Documents</p> | <p><i>Delete sub paragraphs (a) to (h) of Sub-Clause 1.5 and substitute with the following:</i></p> <p>(a) The Integrity Pact (b) The Contract Agreement; (c) The Letter of Award;</p> |

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| | <p>(d) The Minutes of Meeting of Pre-Award clarifications / negotiations after opening of the Financial Proposal, if any;</p> <p>(e) (i) The Letter of Tender (Financial Proposal); (ii) Schedule of Payments;</p> <p>(f) The Appendix to Tender;</p> <p>(g) The Particular Conditions;</p> <p>(h) The General Conditions;</p> <p>(i) (i) The Employer's Requirements; (ii) The Letter of Tender (Technical Proposal)</p> <p>(j) Contractor's Technical Proposal</p> <p>(k) Site Data, Reports and Plans (Volume IV)</p> <p>(l) Contractor's Proposal and any other documents forming part of the Contract.</p> <p>Subject to the above, in case of ambiguities or discrepancies within this Contract, the following shall apply:</p> <p>(i) between two or more Clauses of this Contract, the provisions of a specific Clause relevant to the issue under consideration shall prevail over those in other Clauses;</p> <p>(ii) between the written description on the Drawings and the Specifications, the latter shall prevail;</p> <p>(iii) between the dimension scaled from the Drawing and its specific written dimension, the latter shall prevail; and</p> <p>(iv) between any value written in numerals and that in words, the latter shall prevail.</p> |
| <p>Sub-Clause 1.6 Contract Agreement</p> | <p>Replace the word "Employer" at the end with the word "Contractor", and insert the following additional para.</p> <p>"Unless and until a formal Contract Agreement is prepared and executed, the Employer's Letter of Award shall constitute a binding Contract between the Employer and the Contractor."</p> |
| <p>Sub-Clause 1.7 Assignment</p> | <p>Delete the contents of Sub-Clause 1.7 and substitute with the following:</p> <p>"The Employer may assign the whole or any part of the Contract or any benefit or interest in or under the Contract without the prior agreement of the Contractor.</p> |
| <p>Sub-Clause 1.9 Confidentiality</p> | <p>Insert the following as 2nd para under Sub-Clause 1.9:</p> <p>The Contractor and his SubContractors, if any, shall treat all the documents and information received from CoPT/Indian Navy and all other related documents/communications including the documents prepared by the Contractor/Sub Contractor as part of this Work/Project in confidence and shall ensure that all who have access to such material shall also treat them in confidence. The Contractor/SubContractor shall not divulge any such information unless CoPT authorizes the Contractor/SubContractor in advance in writing. Further, if required, the Contractor/SubContractor shall return all the documents received from CoPT from time to time after completion of the Work related to those documents. The Contractor/SubContractor will also be required to execute a Non-Disclosure Agreement in this connection.</p> |

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| <p>Sub-Clause 1.11 Contractor's Use of Employer's Documents</p> | <p>Delete the words “, except as necessary for the purposes of the Contract” at the end of paragraph.</p> |
| <p>Sub-Clause 1.15 Fraud and Corruption</p> | <p>Add the following new Sub-Clause 1.15:</p> <p>“If the Employer determines that the Contractor and/or any of its personnel, or its agents, or its Subcontractors, sub-consultants, services providers, suppliers and/or their employees has engaged in corrupt, fraudulent, collusive coercive, or obstructive practices, in competing for or in executing the Contract, then the Employer may, after giving 14 days' notice to the Contractor, terminate the Contractor's employment under the Contract and expel him from the Site, and the provisions of Clause 15 shall apply as if such expulsion had been made under Sub-Clause 15.2.</p> <p>For the purposes of this Sub-Clause,</p> <p>(a) “corrupt practice” means the offering, receiving, or soliciting, directly or indirectly, of anything of any value to influence the actions of a public official in the selection process or in contract execution;</p> <p>(b) “fraudulent practice” means a misrepresentation or omission of facts in order to influence a selection Process or the execution of a contract;</p> <p>(c) “collusive practice” means a scheme or arrangement between two or more Tenderers, with or without the knowledge of the Employer, designed to establish prices at artificial, non-competitive levels;</p> <p>(d) “coercive practice” means harming or threatening to harm, directly or indirectly, person or their property to influence their participation in a procurement process, or affect the execution of a contract.</p> <p>(e) “obstructive practice” is</p> <p>(i) deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede an Employer's investigation into allegations of a corrupt, fraudulent, coercive or collusive practice; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation, or</p> <p>(ii) acts intended to materially impede the exercise of the Employer's inspection and audit rights.</p> |
| <p>Sub-Clause 2.1 Right of Access to the Site</p> | <p>Delete the words “plus reasonable profit” from sub-paragraph (b) of third paragraph of Sub-Clause 2.1.</p> |
| <p>Sub-Clause 2.2 Permits, Licences or Approvals</p> | <p>Replace the Sub-Clause with the following:</p> <p>The Contractor shall be responsible to obtain all necessary permits, Licences and Approvals for execution of the Works. The Employer (where he is in position to do so and without any obligation) will supply copies of such documents as may be requested by the Contractor.</p> |

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| <p>Sub-Clause 2.4 Employer's Financial Arrangements</p> | <p><i>Delete the Sub-Clause.</i></p> |
| <p>Sub-Clause 2.5 Employer's Claims</p> | <p><i>Replace the first sentence of the last para with the following;</i> The Employer, without prejudice to the other recourse available under the Contract, may deduct the amount from any moneys due, or to become due, to the Contractor.</p> |
| <p>Sub-Clause 3.2 Other Employer's Personnel</p> | <p><i>Replace the last two sentences of first para with the following;</i> These assistants may include a Resident Engineer, and/or independent inspectors appointed to inspect and/or test items of the Works. The assignment, delegation or revocation shall not take effect until a copy of it has been duly communicated to the Contractor as mentioned herein.</p> |
| <p>Sub-Clause 3.3 Delegated Persons</p> | <p><i>Insert the word "breaches" in between the words "errors" and "omissions" in para (a).</i></p> |
| <p>Sub-Clause 3.4 Instructions</p> | <p><i>Add "or the Employer's Representative" after the word Employer at the beginning of first para.</i> <i>Delete the words "or an assistant" in the last para.</i></p> |
| <p>Sub-Clause 3.5 Determinations</p> | <p><i>Delete the last sentence of the second para and add the following as subsequent separate paras;</i> If the Contractor fails to give notice of dissatisfaction to the Employer within such period of 14 days, the determination shall become final and binding on the Contractor and the Employer shall be deemed to have been discharged from all liability in connection with such claim / dispute. In the event of giving notice of dissatisfaction as hereinabove within 14 days, the Contractor may endeavour to settle the dispute in accordance with Sub-clause 20.5 and Sub-clause 20.6. However, during the above process, the Contractor shall continue to / proceed with execution of the Works in accordance with the Contract.</p> |
| <p>Sub-Clause 4.1 Contractor's General Obligations</p> | <p><i>Add the following at the end of the first para;</i> The design responsibility of the Contractor shall survive for the design life of the Works as stipulated in the Employer's Requirements. <i>Replace the second para with the following;</i> The Contractor shall execute the Works and provide Contractor's Documents specified in the Contract, and all Contractor's Personnel, Goods, consumables and other things and services, whether of a temporary or permanent nature, required in and for this design, execution, completion and remedying of defects. <i>Add the following paras at the end of the Sub-Clause;</i> In the event the Works executed are not in accordance with the Contract and the Contractor fails to remedy the same for whatsoever reason, the Employer shall proceed in accordance with Sub-Clause 2.5 [Employer's Claims] and Sub-Clause 3.5</p> |

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| | <p>[Determinations] to;</p> <ul style="list-style-type: none">(a) reject such work in full and recover all such monies due to the Employer as per the above Determination including but not limited to set-off / adjustment / recovery of the amounts already paid, if any, for such works or otherwise; or(b) devalue the value of such work and recover all such monies due to the Employer as per the above Determination including but not limited to set-off / adjustment / recovery of the amounts already paid, if any, for such works or otherwise. |
| <p>Sub-Clause 4.2 Performance Security</p> | <p>Replace the first para with the following;</p> <p>The Contractor shall obtain (at his cost) a Performance Security equivalent to 5% (five percent) of the Contract Price for proper performance, in the currencies stated in the Contract.</p> <p>Replace the second para with the following;</p> <p>The Contractor shall deliver the Performance Security to the Employer within 14 days of issue of Letter of Award. The Performance Security shall be in the form of an irrevocable unconditional bank guarantee approved by the Employer and issued by a Nationalized/Scheduled Bank located anywhere in India or if issued from abroad, the same shall be authenticated by a Nationalised Bank of India, in the format annexed hereto.</p> <p>Add the following as a new para;</p> <p>Any enforcement of / recourse to any claim against the Contractor shall remain non-refundable to the extent so claimed by the Employer. The Contractor shall thereafter furnish a fresh Performance Security of the remaining balance of the Performance Security to the extent not claimed, while proceeding execution or completion of the Works or attend to any defect.</p> <p>Delete the word “or” at the end of sub-para (c) of fourth paragraph of Sub-Clause 4.2.</p> <p>Delete para (d) and Add the following paras as (d), (e), (f) and (g);</p> <ul style="list-style-type: none">(d) in case of sanctions for violations of Integrity Pact,(e) circumstances which entitle the Employer to Termination under Sub-Clause 15.2 [Termination by Employer], irrespective of whether Notice of Termination has been given and / or the Contract has been terminated,(f) failure by the Contractor to comply with any of the Instructions of the Employer and/or failure by the Contractor to honour any of the obligations under the Contract, or(g) in the event of any breach or abandonment or negligence or misconduct or omission or non-compliance on the part of the Contractor in connection with the Contract. <p>Delete the fifth paragraph of Sub-Clause 4.2 in its entirety.</p> <p>Replace the last para with the following para;</p> |

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| | <p>The Employer shall return the Performance Security to the Contractor within 21 days after the Contractor has received the Performance Certificate.</p> |
| <p>Sub-Clause 4.3 Contractor's Representative</p> | <p>Add the words “through notarized Power of Attorney” between the word “authority” and “necessary” in first paragraph of Sub-Clause 4.3.</p> <p>Delete the last sentence of second para and add the following as last sentence;</p> <p>If consent is withheld or subsequently revoked, or if the appointed person fails or incapable in the opinion of the Employer / Employer's Representative, to act as Contractor's Representative, the Contractor shall immediately replace such person and submit the name and particulars of another suitable person for such appointment.</p> <p>Replace the fourth para with the following para;</p> <p>The Contractor's Representative shall, on behalf of the Contractor, receive all communication and/or instructions under Sub-Clause 3.4 [Instructions].</p> <p>Replace the fifth para with the following para;</p> <p>The Contractor's Representative, with the prior consent of the Employer, may delegate any powers, functions and authority to any competent person, and may at any time revoke the delegation. Any delegation or revocation shall not take effect until consent of the Employer's Representative has been received by the Contractor's Representative.</p> <p>Add the following paras at the end of the Sub-Clause;</p> <p>The Contractor, during currency of the Contract, shall not remove any key personnel from the Site without permission of the Employer, which permission may or may not be given considering the requirements of the Works.</p> <p>If, in the opinion of the Employer's Representative, the presence of any Contractor's personnel, including the Contractor's Representative, will have adverse effect to the Parties or the Works, the Employer's Representative may instruct the Contractor to remove / replace such personnel from the Site or work place and the Contractor shall immediately comply with such instructions and such personnel shall never be present in the Site unless permitted by the Employer otherwise.</p> |
| <p>Sub-Clause 4.4 SubContractors</p> | <p>Replace the Sub-Clause with the following;</p> <p>“The Contractor shall not subcontract the whole of the Works.</p> <p>The Contractor, subject to the relevant terms and obligations under this Contract, may subcontract (less than 15%) a part of the Works but not subcontract the whole of the Works under any circumstances and the Contractor shall not be relieved from any of its liabilities or obligations or responsibilities under the Contract due to such subcontracting.</p> <p>The Contractor shall not subcontract any part of the Works without the prior consent of the Employer or the Employer's Representative. The Contractor shall, in order to obtain the prior written consent of the Employer, notify in writing to the Employer or the Employer's Representative of all the details of the subcontracts intended to be awarded to any Subcontractor under this Contract.</p> <p>The Contractor is not required to obtain consent from the Employer for: (i) the provision of labour, or (ii) the subcontracting of any part of the Works for which the Sub-Contractor is named in the Contract.</p> |

The Contractor shall be responsible for the acts or defaults of any SubContractor, his agents or employees, as if they were the acts or defaults of the Contractor. Where specified in the Contract, the Contractor shall give the Employer not less than 28 days' notice of:

- (a) the intended appointment of the SubContractor, with detailed particulars which shall include his relevant experience,
- (b) the intended commencement of the SubContractor's work, and
- (c) the intended commencement of the SubContractor's work on the Site.

The Contractor shall also submit an undertaking from the proposed SubContractor indemnifying the Employer from any claims of whatsoever nature, including but not limited to payments due to SubContractor from the Contractor, any claims or disputes between the Contractor and SubContractor.

The Contractor shall indemnify or hold harmless the Employer against SubContractors' payment, wages, non-compliance of taxes / statutory norms etc. resulting from any SubContract.

The Employer at its sole discretion may or may not give consent to the Contractor for appointment of a SubContractor for any part of the Works.

In the event the Employer gives consent for appointment, such consent shall not relieve the Contractor from any liability or obligation under the Contract and the Contractor shall solely be responsible for the acts or breaches or failures or defaults or neglects of any SubContractor as fully as they were the acts or breaches or failures or defaults or neglects of the Contractor.

The Contractor shall, on written notice from the Employer's Representative, terminate the employment of any SubContractor whose acts or omissions, in the reasonable opinion of the Employer's Representative, may any time be detrimental to the interest of the Employer or the Contractor or the Works.

The SubContractor shall furnish to the Employer copy of all SubContracts and purchase orders (POs) issued by the Contractor for execution of the Works. Upon termination of the Contract by the Employer for repudiation, abandonment, or for any other reason whatsoever, the Employer shall be empowered to deal directly with the SubContractors in terms of the subcontracts or P.Os."

**Sub-Clause
4.6
Cooperation**

Replace the Sub-Clause with the following:

"The Contractor shall, as specified in the Contract or as instructed by the Employer, allow appropriate opportunities for carrying out work to:

- a. the Employer's Personnel,
- b. any other contractors employed by the Employer, and
- c. the personnel of any legally constituted public authorities

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

The Contractor shall be responsible for all his construction activities on the Site for due and proper execution of the Works and interface obligations related to other works at the Site, and shall co-ordinate his own activities with those of others to ensure that no

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| | <p>works including but not limited to the Works herein have been hampered or disturbed to the extent (if any) specified in the Employer's Requirements. The Contractor undertakes and also indemnifies the Employer from all or any claims of the other contractors due to any of his direct or indirect actions or inactions or breaches or failures or defaults etc.</p> <p>If, under the Contract, the Employer is required to give to the Contractor possession of any foundation, structure, plant or means of access in accordance with Contractor's Documents, the Contractor shall submit such documents to the Employer in the time and manner stated in the Employer's Requirements."</p> |
| Sub-Clause 4.8 Safety Procedures | <p>Add the following at the end of this Sub-Clause:</p> <p>"The Contractor shall comply with all precautions as required for the safety of the workmen by I.L.O. convention (No.62) as far as they are applicable to the Contract. The Contractor shall provide all necessary safety appliances, equipment such as goggles, helmets, masks, etc., to the workmen and staff. The Contractor shall be responsible for observance by his SubContractors of the foregoing provisions."</p> |
| Sub-Clause 4.13 Rights of Way and Facilities | <p>Add the following at the end of the Sub-Clause;</p> <p>"The Contractor shall plan all his activities to ensure that his activities will not damage or disturb or hinder the existing facilities and/or ongoing operations of the Terminal of the Employer, including but not limited to security measures and permissions and entry restrictions etc."</p> |
| Sub-Clause 4.14 Avoidance of Interference | <p>Add the following para (c) after Para (b);</p> <p>(c) "existing facilities and/or ongoing operations of the Terminal of the Employer."</p> |
| Sub-Clause 4.15 Access Route | <p>Add the following at the end of the Sub-Clause;</p> <p>"The Contractor shall understand that the access route is not exclusive to himself and the same access route shall be used by the Employer and Employer's other contractors also. This shall not relieve the Contractor from performing his contractual obligations mentioned herein above including but not limited to maintenance of the access route, providing necessary display signs, etc.</p> <p>If any damage occurs to any bridge or road communicating with or on the routes to the Site arising from the transport of materials, equipment or plant, the Contractor shall notify the Employer, as soon as he becomes aware of such damage or as soon as he receives any claim from the Authority entitled to make such claim, whichever happens earlier. Where under any law or regulation the hauler of such materials, equipment or plant is required to indemnify the road Authority against damage, the Employer shall not be liable for any costs, charges or expenses in respect thereof or in relation there to."</p> |
| Sub-Clause 4.16 Transport of Goods | <p>Delete the words "Particular Conditions" in the first sentence of this Sub-Clause and insert the word "Contract";</p> |
| Sub-Clause 4.17 Contractor's Equipment | <p>Add the following at the end of the Sub-Clause;</p> <p>"and unless permitted at the request of the Contractor or otherwise directed by the Employer to remove or demobilize, the Contractor's Equipment shall remain at Site during currency of the Contract without any cost or implications to the Employer. Any demobilization of the Contractor's Equipment without prior approval of the Employer shall be an event of breach of the Contract by the Contractor and the Employer may proceed in accordance with the Contract. The Employer shall not have any implications</p> |

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| | for time consumed in giving permission to demobilize the Contractor's Equipment.” |
| Sub-Clause 4.18 Protection of the Environment | <p>Add the following at the end of the Sub-Clause:</p> <p>“The Contractor shall comply with the detailed environmental management requirements defined in the Employer’s Requirements including development, submission and implementation of an approved Construction Environmental Management Plan (CEMP).”</p> |
| Sub-Clause 4.19 Electricity, Water and Gas | <p>Replace the Sub-Clause with the following:</p> <p>Unless agreed otherwise by the Parties, the Contractor shall make his own arrangements for electricity, water and gas and other services which he may require in connection with the Contract.</p> <p>The Employer, at his sole discretion and without any obligation to do so, may facilitate / provide assistance for procuring electricity, water and gas connections. The Contractor shall always cooperate with regulatory agency norms in the procurement of these services.</p> |
| Sub-Clause 4.20 Employer’s Equipment and Free-Issue Material | Delete the Sub-Clause. |
| Sub-Clause 4.21 Progress Reports | <p>Delete the words “Particular Conditions” in the first sentence of first Para of this Sub-Clause and insert the word “Contract”;</p> <p>Insert the following next to the first sentence of the first para of this Sub-Clause;</p> <p>Non-submission of the Progress Reports as herein shall amount to breach of the Contract by the Contractor.</p> <p>Modify the para (b) as hereunder;</p> <p style="padding-left: 40px;">(b) photographs and video records showing the status of progress of the Works on the Site;</p> <p>Delete the content under para (f) and mark as ‘deleted’;</p> <p>Add the following after para (h);</p> <p style="padding-left: 40px;">(i) the Contractor’s forecast of the amounts expected to be spent on the Works performed within the next three months.</p> |
| Sub-Clause 4.22 Security of the Site | <p>Replace the first para / sentence of the Sub-Clause with the following two paras;</p> <p>The Contractor shall scrupulously comply with the security measures / guidelines at the Site and / or the Terminal and in the event of failure for whatsoever reason, the Contractor, without any limitation, shall be responsible for all the direct and indirect consequences / losses / damages etc. thereof.</p> <p>Save as and unless otherwise stated in the Contract:</p> <p>Add the following paras (c), (d) and (e) after Para (b);</p> <p style="padding-left: 40px;">(c) The Contractor shall comply with all security related requirements as determined by the Naval Base Security Officials and the Employer as provided in the Employer’s Requirements,</p> |

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| | <p>(d) the Contractor shall be responsible for safe keeping of Employer's goods, if any, supplied for Project, and</p> <p>(e) the Contractor shall comply or honour the security measures being / to be implemented at the Site or the Terminal.</p> |
| <p>Sub-Clause 4.23 Contractor's Operations on Site</p> | <p>Replace third para with the following;</p> <p>Upon the issue of the Taking-Over Certificate for the Works, the Contractor shall clear away and remove all Contractor's Equipment, wreckage, rubbish and Temporary Works, except those are specifically instructed by the Employer and/or required for completion of the balance / pending works and/or to attend defect rectification. The Contractor shall leave the Site and the Works in a clean and safe condition. However, the Contractor may retain on Site, during the Defects Notification Period, such Goods as are required for the Contractor to fulfill obligations under the Contract.</p> <p>Add the following at the end of the Sub-Clause;</p> <p>In addition to and not in derogation with the other conditions stipulated herein, the Contractor shall note that the Employer and other contractors employed by the Employer will be working on the Site and the Contractor shall not obstruct any such works and shall extend co-operation to these agencies.</p> |
| <p>Sub-Clause 4.25 Validity of Integrity Pact</p> | <p>Insert the following new Sub-Clause 4.25:</p> <p>"The Contractor shall ensure that the Integrity Pact is valid and enforceable until one hundred eighty (180) days after the receipt of the Final Payment Certificate. If the terms of the Integrity Pact specify its expiry date, and the Contractor has not received the Final Payment Certificate by the date 28 days prior to the expiry date, the Contractor shall extend the validity of the Integrity Pact until one hundred eighty (180) days after the Final Payment Certificate has been received by the Contractor."</p> |
| <p>Sub-Clause 5.1 General Design Obligations</p> | <p>Replace para (d) with the following;</p> <p>(d) portions, data and information which the Contractor has been expressly exempted to verify the accuracy and correctness of the same.</p> |
| <p>Sub-Clause 5.4 Technical Standards and Regulations</p> | <p>Delete the word "Country's" from the first para and insert the word "Indian".</p> <p>Delete the words "and each Section" and the words "or Section" from the beginning part of the second para.</p> <p>Add the following to the last para;</p> <p>All designs and construction drawings are required to meet the technical standards and regulations stipulated in the Contract, and the same shall be submitted to the Employer / the Employer's Representative for review and comments, if any. Such submission and receipt or non-receipt of any observations or comment shall not relieve the Contractor from his responsibilities / obligations under the Contract.</p> |
| <p>Sub-Clause 6.1 Engagement of Staff and Labour</p> | <p>Add the following as last para to the Sub-Clause;</p> <p>The Contractor is encouraged, to the extent practicable and reasonable, to employ staff and labour with appropriate qualifications and experience from the sources, if available, within the State of Kerala, India.</p> |
| <p>Sub-Clause 6.2 Rates of Wages and Conditions of Labour</p> | <p>Replace the Sub-Clause with the following;</p> <p>The Contractor shall pay the labour engaged by him for the Works not less than fair</p> |

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| | <p>wages which expression shall mean whether for the time or piece work, the labour rates of wages as fixed by the Government of Kerala under the Minimum Wages Act as fair wages payable to the different categories of labourers.</p> <p>The Contractor shall maintain records of wages and other remuneration paid to his labour, employees in such forms as may be prescribed by and to the requirements of the Employer and Conciliation Officer, Central Ministry of Labour, Government of India or such other authorized persons appointed by the Government of Kerala. The Contractor shall also exhibit the different notices as required under the Minimum Wages Act 1949, Payment of Wages Act 1936 and other Acts, Rules and Regulations made there under from time to time.</p> <p>The Employer or any other person authorized by him on his behalf shall have power to make enquiries with a view to ascertain proper observance of the Fair Wage Clause. He shall also have the power to investigate into and settle any complaints regarding any default made by the Contractor or SubContractor in regard to such provisions or payment of wages to the labour / workmen and adjust such amount from any amount due and payable to the Contractor or may recover otherwise.</p> <p>The Contractor shall be fully responsible for complying with all applicable laws related to employing the labour / construction workers for the execution of the Contract and the Contractor shall fully indemnify the Employer / Employer's Representative from all penalties, fines, liabilities, statutory payment, if any, that are imposed by the government authorities against violation of any of the laws / rules / conditions.</p> |
| <p>Sub-Clause 6.4 Labour Laws</p> | <p><i>Insert the following as third para of the Sub-Clause;</i></p> <p>The Employer may require the Contractor at any time to furnish necessary documents for verification and / or to comply with the conditions herein and/or the laws in force from time to time.</p> |
| <p>Sub-Clause 6.5 Working Hours</p> | <p><i>Add the following at the beginning of the Sub-Clause;</i></p> <p>The Contractor shall in all dealings with labour in his/her employment have due regard to all recognised festivals, days of rest and religious or other customs.</p> |
| <p>Sub-Clause 6.6 Facilities for Staff and Labour</p> | <p><i>Replace the second para with the following;</i></p> <p>The Contractor shall not permit any of the Contractor's Personnel / labour to maintain any temporary or permanent living quarters / arrangement within the structures forming part of the permanent Works/Site.</p> <p><i>Add the following as last paras of the Sub-Clause;</i></p> <p>The Contractor shall, so far as is reasonably practicable having regard to local conditions, provide on the Site, to the satisfaction of the Employer, an adequate supply of drinking and other water for the use of the Contractor's staff and work people.</p> <p>The Contractor shall arrange for the provision of a sufficient supply of suitable food at reasonable prices for all his staff, labour and SubContractors for the purposes of or in connection with the Contract.</p> <p>The Contractor shall, at his own expense, provide proper and suitable footwear and Personal Protection Equipment for all labour and staff engaged on concrete mixing and all other types of work involving the use of tar, cement, etc. to the satisfaction of the Employer, and on his failure to do so, the Employer shall be entitled to provide the same and recover the cost from the Contractor.</p> |

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| <p>Sub-Clause 6.7 Health and Safety</p> | <p>Add the following as last paras of the Sub-Clause;</p> <p>In the event of any outbreak of illness of an epidemic nature, the Contractor shall comply with and carry out such regulations, orders and requirements as may be made by the Government or the local medical or sanitary authorities for the purpose of dealing with and overcoming the same.</p> <p>The Contractor shall within 24 hours of the occurrence of any accident at or about the site or in connection with the execution of the Work, report such accidents to the Employer. The Contractor shall also report such accidents to the Competent Authorities to whom such report is required by Law. The Contractor shall fully indemnify the Employer from all penalties, fines, and liabilities etc. that are imposed by the relevant Government authorities against violation of any of the conditions.</p> <p>The Contractor shall follow and implement the Environmental Management Plan given at Specification and also the updates if any. The Contractor shall develop Environmental Management Systems that covers all its operations and shall be certified to ISO 14001 within one year from the Award of Contract.</p> <p>The Contractor shall develop Occupational Health & Safety Management Systems that covers all its activities / operations and shall be certified to OHSAS 18001 within one year from the Award of Contract.</p> |
| <p>Sub-Clause 6.11 Disorderly Conduct</p> | <p>Add the following as last para of the Sub-Clause;</p> <p>“The Contractor or his personnel shall not import, bring in consume, sell, give, barter or otherwise dispose of any alcoholic liquor or drugs or any prohibited product by law. The Contractor shall not permit or suffer any such importation, consumption, sale, gift, barter or disposal by his SubContractors, agents or employees.”</p> |
| <p>New Sub-Clause 6.12 Arms and Ammunitions</p> | <p>Add the following new Sub-Clause 6.12;</p> <p>“The Contractor shall not give, barter or otherwise dispose of to any person or persons any arms or ammunitions of any kind or permit or suffer the same as aforesaid. The Contractor shall fully indemnify the Employer from any consequences, both financial as well as criminal, arising as a result of violation of any of the Indian Laws.”</p> |
| <p>New Sub-Clause 6.13 Compliance with Regulations, etc.</p> | <p>Add the following new Sub-Clause 6.13;</p> <p>The Contractor shall at all times during the continuance of the Contract comply fully with all existing Acts, regulations and bye-laws including all statutory amendments and re-enactments of State or Central Government and other local authorities and any other enactments and Acts that may be passed in future either by the State or Central Government or local authority. The acts include but not limited to Minimum Wages and Factory Acts, Contract Labour Regulation and Abolition Act, Workmen's Compensation Act, Construction Labour Welfare Cess Act and schemes made under the said Acts, Health and Sanitary Arrangements for Workmen, Insurance and other benefits under any other Acts applicable from time to time. The Contractor shall keep the Employer indemnified in case any action is commenced for contravention by the Contractor.</p> <p>If the Employer is caused to pay or reimburse such amounts as may be necessary to cause or observe, or for non-observance of the provisions stipulated here forth on the part of the Contractor, the Employer shall have the right to deduct from any moneys due to the Contractor or his amount of guarantee or recover from the Contractor personally any sum required or estimated to be required for making good the loss or damage suffered by the Employer.</p> |
| <p>New Sub-Clause 6.14</p> | <p>Add the following new Sub-Clause 6.14;</p> |

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| <p>Expenses Towards Compliances</p> | <p>The Contract Price shall be deemed to include all expenses whatsoever that the Contractor may be required to incur for compliance with the provisions of the Contract, relevant Regulations, Acts and Bye-Laws, Custom clearances, etc.</p> |
| <p>New Sub-Clause 6.15 Repatriation of Labour</p> | <p>Add the following new Sub-Clause 6.15;</p> <p>The Contractor shall be responsible for the return to the place where they were recruited or to their domicile of all such persons as he recruited and employed for the purpose of or in connection with the Contract and shall maintain such persons, as are to be so returned, in a suitable manner until they shall have left the Site, or in case of persons who are not nationals of and have been recruited outside, India, shall have left India.</p> |
| <p>New Sub-Clause 6.16 Deduction of Moneys from the Contractor</p> | <p>Add the following new Sub-Clause 6.16;</p> <p>The Employer shall have the right to deduct from the monies due to the Contractor any sum required or estimated to be required for making good the loss suffered by a worker or workers by reason of the non-payment of the aforesaid fair wage and/or non-compliance of the aforesaid acts.</p> |
| <p>New Sub-Clause 6.17 Contractor Responsible for Observance</p> | <p>Add the following new Sub-Clause 6.17;</p> <p>The Contractor shall be responsible for observance by his SubContractors of the foregoing provisions.</p> |
| <p>New Sub-Clause 6.18 Record of Labour etc.</p> | <p>Add the following new Sub-Clause 6.18;</p> <p>The Contractor shall disclose and display at his office on the Site in proper and at such intervals as the Employer may prescribe, details of the supervisory staff and the several classes of labour from time to time employed on the Site.</p> |
| <p>Sub-Clause 7.1 Manner of Execution</p> | <p>Replace the first para with the following;</p> <p>The Contractor shall carry out execution of the Works:</p> <p>Replace the word “Contract” in para (a) with the words “Employer’s Requirements”.</p> <p>Add the following para at the end of the Sub-Clause;</p> <p>No material shall be brought to Site until its source has been approved by the Employer after doing all the tests as specified in relevant Codes or specified in the Contract.</p> |
| <p>Sub-Clause 7.4 Testing</p> | <p>Replace the first para with the following;</p> <p>This Sub-Clause shall apply to all tests specified in the Employer’s Requirement and any other tests that the Employer requires the Contractor to perform, other than the Tests, after Completion (if any).</p> <p>Delete the word “Plant” from the third para;</p> <p>Delete para (b);</p> |
| <p>New Sub-Clause 7.9 Conditions for Hire of Construction Equipment and Subcontractors</p> | <p>Add the following new Sub-Clause;</p> <p>With a view to securing in the event of termination of the Contract, for the continued availability for the purpose of executing the Works of any essential hired Construction Equipment held and/or the Subcontracts entered into by the Contractor under any agreement for the purpose thereof, the Contractor shall not bring on to the Site any hired Construction Equipment or shall not engage any SubContractor unless the agreement for</p> |

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| | <p>the purpose thereof contains the following provisions.</p> <p>The Owner of any item of plant or any SubContractor upon receiving instructions in writing from the Employer shall transfer the hiring of the said items of plant from the Contractor to the Employer or the obligations of the SubContracts in favour of the Employer on the same terms and conditions except that the Employer shall be entitled to permit the use thereof by any other Sub-contractor employed by him for the purpose of completing the Works.</p> <p>Copy of such agreement shall be submitted by the Contractor to Employer prior to bringing the construction equipment to the Site and/or engaging the SubContractor, as the case may be.</p> |
| <p>New Sub-Clause 7.10 Payments by Employer to Construction Equipment of Owner / Subcontractors</p> | <p>Add the following new Sub-Clause;</p> <p>In the event of termination or in the event of the failure of the Contractor to pay the sums due to the owner of any Construction Equipment / SubContractor from time to time, the Employer shall in order to avoid seizure by the owner of any Construction Equipment held by the Contractor or suspension of the Works by the Subcontractor under an agreement for purpose thereof be entitled to pay such owner / SubContractor the amount due and payable under such agreement and in the event of the Employer doing so any amount so paid by him shall be debt due from the Contractor to the Employer and without reference to the provisions of Employer's Claims may be deducted by the Employer from any moneys due or that may become due to the Contractor under the Contract or recover the same from the Contractor otherwise. In the event of forfeiture of all expenses incurred in this respect by the Employer shall, for the purpose of this Clause, be part of the cost of completing the Works.</p> <p>The Contractor shall not bring on the Site any Construction Equipment hired or SubContractor engaged under an agreement unless the agreement in respect thereof shall contain the following provisions.</p> <p>The owner of the plant or the SubContractor upon receiving instructions in writing from the Employer will accept payment from the Employer of the sums due and payable under the respective agreement and transfer the benefit of such agreement from the Contractor to the Employer on the same terms and conditions, and the Employer shall be entitled to use such construction equipment or permit the use thereof by any other Sub-Contractor employed by him for the purpose of completing the Works.</p> |
| <p>Sub-Clause 7.11 Warranties</p> | <p>Add the following new Sub-Clause:</p> <p>"The Contractor shall ensure that the benefit of any remaining period of warranty obtained in respect of an item of Plant incorporated into the Works is assigned to the Employer at the end of the relevant Defects Notification Period."</p> |
| <p>Sub-Clause 8.1 Commencement of Works</p> | <p>Replace the Sub-Clause with the following;</p> <p>The Contractor shall commence the design and execution of the Works immediately after the Commencement Date and shall then proceed with the Works with due expedition and without delay.</p> |
| <p>Sub-Clause 8.2 Time for Completion</p> | <p>Replace the Sub-Clause with the following;</p> <p>The Contractor shall complete the whole of the Works, and each Section (if any), within the Time for Completion stated in the Appendix to Tender for the Works or Section (as the case may be), including:</p> <p>(a) achieving the passing of the Tests on Completion, and</p> |

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

In addition to Time for Completion for 'whole of the Works' and for 'each Section (if any)', the Time for Completion for the Milestones shall be as follows:

Milestone-1: Three Hundred Sixty (360) days from the Commencement Date

Prior to the occurrence of Milestone-1, the Contractor shall have completed (i) the dismantling of existing structures of north jetty, mooring dolphin and approach trestle and (ii) 50% of reclamation fill.

Milestone-2: Five Hundred Forty (540) days from the Commencement Date

Prior to the occurrence of Milestone-2, the Contractor shall have completed (i) 200 nos. of jetty / approach / FIC bay piles and (ii) 100% Reclamation fill.

Milestone-3: Nine Hundred (900) days from the Commencement Date

Prior to the occurrence of Milestone-3, the Contractor shall have completed (i) All piles; (ii) Placement of all precast beams and (iii) various construction activities entitling the Contractor a cumulative total gross payment of at least Fifty Percent (50%) of the Accepted Contract Amount, based only on Schedule of Payments.

Milestone-4: One Thousand and Eighty (1080) days from the Commencement Date

Prior to the occurrence of Milestone-4, the Contractor shall have completed (i) All piles, beams and 50% of deck slab; (ii) Tower Cranes are ready for shipment to site; (iii) Foundations of the Buildings; (iv) 50% of roads, drains, electrical works and (v) various construction activities entitling the Contractor a cumulative total gross payment of at least Seventy Percent (70%) of the Accepted Contract Amount, based only on Schedule of Payments.

For the avoidance of doubt, it is agreed between the Parties that the following payments shall be excluded from the cumulative total gross payment stated in the Sub Milestones 3 and 4 above:

- (i) Advance payment (Sub-Clause 14.2)
- (ii) Payment of Retention Money (Sub-Clause 14.9)
- (iii) Payment on account of Adjustments for Changes in Legislation (Sub-Clause 13.7)
- (iv) Payment on account of Variations (Clause 13) and
- (v) Payment on account of Claims pursuant to any Condition of Contract.

**Sub-Clause 8.3
Programme**

Replace the Sub-Clause with the following;

The Contractor shall prepare and submit to the Employer not later than 21 days after the Commencement Date, a detailed programme showing various activities of the Works using MS project (Windows) / any other suitable Project Monitoring and Review Software as suggested by the Employer to achieve a regular monthly report and as and when required by the Employer. It is important that Contractor shall develop the level 4

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| | <p>programme and level 2 programme for implementation and resource planning.</p> <p>Time is the essence of the Contract. Construction updates using software for Project Status & Resource Planning, should therefore be regularly submitted. The Contractor shall continuously update these reports with related information in a format acceptable to the Employer, so as to reach the satisfaction level of the Employer.</p> <p>Updates of various reports shall be necessarily submitted in hard copies and soft copies on CD-ROM's.</p> <p>Unless otherwise stated in the Contract, each programme shall include:</p> <ul style="list-style-type: none"> (a) the order in which the Contractor intends to carry out the Works, including the anticipated timing of each major stage of the Works, (b) the periods for reviews under Sub-Clause 5.2 [Contractor's Documents], (c) the sequence and timing of inspections and tests specified in the Contract, and (d) a supporting report which includes: <ul style="list-style-type: none"> (i) a general description of the methods which the Contractor intends to adopt for the execution of each major stage of the Works, and (ii) the approximate number of each class of Contractor's Personnel and of each type of Contractor's Equipment for each major stage. |
| <p>Sub-Clause 8.4 Extension of Time for Completion</p> | <p>Replace first para with the following;</p> <p>“The Contractor shall be entitled subject to Sub-Clause 20.1 [Contractor's Claims] to an extension of the Time for Completion if and to the extent that completion for the purposes of Sub-Clause 10.1 [Taking Over of the Works] or for achievement of Milestone(s) is or will be delayed by any of the following causes:”</p> <p>Delete the sentence “or the Employer's other contractors on the Site” from para (c).</p> <p>Replace last para with the following;</p> <p>“The Contractor shall not be entitled for extension of time for the failures / defaults for which the reasons attributable to the Contractor. The Contractor, subject to other provisions in the Contract, is entitled for extension of time in accordance with this Sub-Clause only for the actual number of days of an event that entitled the Contractor to apply for extension of time and the Contractor shall not be entitled for extension of time towards consequences of such actual delay. Save as the same, if the Contractor considers himself to be entitled to an extension of the Time for Completion, the Contractor shall give notice to the Employer in accordance with Sub-Clause 20.1 [Contractor's Claims]. When determining each extension of time under Sub-Clause 20.1, the Employer shall review previous determinations and may increase, but shall not decrease, the total extension of time, except in case of deletion of a part of the Works.”</p> |
| <p>Sub-Clause 8.5 Delays Caused by Authorities</p> | <p>Delete the Sub-Clause;</p> |
| <p>Sub-Clause 8.7 Delay Damages</p> | <p>Replace the Sub-Clause with the following;</p> |

"If the Contractor fails to comply with Sub-Clause 8.2 [*Time for Completion*], the Contractor shall subject to Sub-Clause 2.5 [*Employer's Claims*] pay delay damages to the Employer for this default.

Delay damages, for failure to complete the Whole of the Works and /or Section(s), (if any) within the Time for Completion shall be the sum stated in the Appendix to Tender, which shall be paid by the Contractor to the Employer for every day which shall elapse between the relevant Time for Completion and the date stated in the Taking-Over Certificate.

Delay damages, for failure to achieve the Milestones in accordance with the Time for Completion set forth in Sub-Clause 8.2 [*Time for Completion*] shall be the sum stated in the Appendix to Tender, which shall be withheld from the Contractor's Interim Payment Certificate(s) for every day which shall elapse between the relevant Time for Completion until the Milestone has been achieved.

Provided that in case:

- (i) Milestone 2 or 3 or 4 is achieved within the Time for Completion as stated in the Sub-Clause 8.2 [*Time for Completion*], the delay damages for failure in achieving previous Milestones 1 and/or 2 and/ or 3, if already withheld from the Contractor's Interim Payment Certificate(s) under this Sub-Clause, shall be refunded by the Employer to the Contractor but without any interest thereon,
- (ii) Whole of the Works are completed within the Time for Completion as stated in the Sub-Clause 8.2 [*Time for Completion*] of the Appendix to Tender, the delay damages for failure in achieving Milestone 1 and/or 2 and/ or 3 and/or 4, if already withheld from the Contractor's Interim Payment Certificate(s) under this Sub-Clause shall be refunded by the Employer to the Contractor but without any interest thereon.

For the avoidance of doubt, it is agreed between the Parties that:

- (a) Delay damages for two or more Milestones shall run concurrently, if applicable, and
- (b) Delay damages withheld for not achieving Milestone(s) shall be forfeited in case the Contractor fails to achieve completion of whole of the Works, within the Time for Completion as stated in the Sub-Clause 8.2 [*Time for Completion*] of the Appendix to Tender

The Employer may, without prejudice to any other method of recovery, deduct the amount of delay damages from any sum due, or to become due to the Contractor or from the Performance Security of the Contractor or any other amounts of the Contractor due from the Government.

Notwithstanding the above, the total amount of damages for failure to comply Sub-Clause 8.2 [*Time for Completion*] shall not exceed the maximum amount of delay damages (if any) stated in the Appendix to Tender.

These delay damages shall be the only damages due from the Contractor for failure to comply Sub-Clause 8.2 [*Time for Completion*] other than in the event of Termination under Sub-Clause 15.2 [*Termination by Employer*] prior to completion of the Works.

These damages shall not relieve the Contractor from his obligation to complete the

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| | <p>Works, or from any other duties, obligations or responsibilities which he may have under the Contract.</p> <p>It is also agreed that recovery of damages under this Sub-Clause shall be without prejudice to the rights of the Employer under this Contract including the right of Termination thereof.</p> <p>The Parties hereby agree that the rate of delay damages agreed in this Sub-Clause 8.7 is a reasonable pre-determined amount, and that the delay damages are not by way of penalty.”</p> |
| <p>Sub-Clause 8.9 Consequence of Suspension</p> | <p><i>Rename the Sub-Clause as the following;</i></p> <p>8.9 Recourse for Suspension by the Employer;</p> <p><i>Replace the word “delay” in para (a) with the words “actual period of suspension”.</i></p> <p><i>Replace last para with the following;</i></p> <p>The Contractor shall not be entitled to an extension of time for, or to payment of the Cost incurred in, making good the consequences of the Contractor’s faulty design, work methods, workmanship, equipment, or materials, or of the Contractor’s failure to protect, store or secure his work and equipment.</p> |
| <p>Sub-Clause 8.10 Payment for Plant and Materials in the Event of Suspension</p> | <p><i>Replace the Sub-Clause with the following;</i></p> <p>The Contractor shall not be entitled to payment for the plant & material, which have not been delivered at Site and/or delivered at Site, but not required for execution of the Works during the suspended period.</p> |
| <p>Sub-Clause 9.1 Contractor’s Obligations</p> | <p><i>Delete the words “Unless otherwise stated in the Particular Conditions” at the beginning of third para.</i></p> <p><i>Replace the word “Plant” in para (a) with the words “the Works”.</i></p> <p><i>Delete the words “or Section” from Para (b) and para (c).</i></p> <p><i>Replace the words “particular condition” in penultimate para with the word “Contract”.</i></p> |
| <p>Sub-Clause 9.3 Retesting</p> | <p><i>Delete the words “or a Section” at the beginning of the Sub-Clause.</i></p> |
| <p>Sub-Clause 9.4 Failure to Pass Tests on Completion</p> | <p><i>Delete the words “or a Section” at the beginning of the Sub-Clause.</i></p> |
| <p>Sub-Clause 10.1 Taking Over of the Works and Sections</p> | <p><i>Delete the word “and Sections” from the Sub-Clause name.</i></p> <p><i>Replace the second para with the following;</i></p> <p>The Contractor may apply by notice to the Employer for a Taking-Over Certificate not earlier than 14 days upon the Works are completed and ready for taking over.</p> <p><i>Delete the words “or Section were” and “substantially” and “or Section” from para (a) of the Sub-Clause.</i></p> |

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| | <p>Replace the last para with the following;</p> <p>If the Employer fails either to issue the Taking-Over Certificate or to reject the Contractor's application within the period of 28 days, and if the Works are completed in accordance with the Contract, the Taking-Over Certificate shall be deemed to have been issued on the last day of that period.</p> |
| <p>Sub-Clause 10.2 Taking Over of Parts of the Works</p> | <p>Replace the Sub-Clause with the following;</p> <p>The Contractor is not entitled to apply for Taking-over Certificate for parts of the Works. However, the Employer shall have right to make use of the Works / parts thereof. The Employer shall, at his sole discretion and without obligation to do so, also have right to take over parts of the Works before the Time for Completion stipulated herein.</p> |
| <p>Sub-Clause 10.3 Interference with Tests on Completion</p> | <p>Delete the words "and/or incurs Cost as a result of this delay" in the first sentence of the second para.</p> <p>Delete para (b);</p> |
| <p>Sub-Clause 11.1 Completion of Outstanding Works and Remedying Defects</p> | <p>Delete the words "and each Section" from the first para.</p> |
| <p>Sub-Clause 11.3 Extension of Defects Notification Period</p> | <p>Replace the Sub-Clause with the following;</p> <p>The Defects Notification period shall be 24 months from the date of issuance of Taking-over Certificate.</p> <p>The Defects Notification Period shall, in respect of any work, which requires repair or replacement and in respect of that work affected by such repair or replacement, be extended for the Works by a period equal to the period during which the work is out of operation and the provisions of this Sub-Clause [Extension of Defects Notification Period] shall apply to the Works remedied or replaced, though the Defects Rectification Period in respect thereof had commenced on the date of such remedy or replacement.</p> <p>The Employer shall be entitled subject to Sub-Clause 2.5 [Employer's Claims] to an extension of the Defects Notification Period for the Works if and to the extent that affected by such repair or replacement, be extended by a period equal to the period. However, a Defects Notification Period shall not be extended by more than two years.</p> <p>If delivery and/or erection of Plant and/or Materials was suspended under Sub-Clause 8.8 [Suspension of Work] the Contractor's obligations under this Clause shall not apply to any defects or damage occurring more than two years after the Defects Notification Period for the Plant and/or Materials would otherwise have expired.</p> |
| <p>Sub-Clause 11.8 Contractor to Search</p> | <p>Delete the second sentence "Unless the defect.....added to the Contract Price." of the Sub-Clause.</p> |
| <p>Sub-Clause 12.2 Delayed Tests</p> | <p>Delete the words "plus reasonable profit, which shall be added to the Contract Price" at the end of the first para.</p> <p>Delete the words "and profit" at the end of the second para.</p> |
| <p>Sub-Clause 12.4 Failure to Pass Tests after Completion</p> | <p>Delete words "plus reasonable profit, which shall be added to the Contract Price" at the end of the last but second para.</p> |

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| | <p>Delete words “and profit” at the end of last para.</p> |
| <p>Sub-Clause 13.1 Right to Vary</p> | <p>Replace the first para with the following;</p> <p>Variations may be initiated by the Employer at any time prior to issuing the Taking-Over Certificate for the Works, either by an instruction or by a request for the Contractor to submit a proposal. A Variation shall not comprise the omission of any work, with an intention to carry out such work by the Employer through others prior to the date of the Time for Completion. However, provided that the Employer shall have right to omit any work or part thereof in the event of: (i) the Contractor gives consent; or (ii) Termination as provided in the Contract; or (iii) the Employer intended to change nature / structure and the Employer and the Contractor unable to arrive at: (a) an agreement on the price of such Variation; or (b) the Contractor serves notice of dissatisfaction on the amount determined by the Employer.</p> <p>Insert the following two paras at the end of the Sub-Clause;</p> <p>The Employer shall not be responsible nor pay for any risks, contingencies, variation in quantities, assumptions, methodologies and manner either due to any mistake or oversight or ignorance of the Contractor.</p> <p>However, the Employer, except as provided herein, shall pay for Variations due to any changes or modifications made by him in the Employer's Requirements. For such variations ordered by the Employer, the rates arrived as per DSR (Delhi Schedule of Rates)-2018 + 55% shall be utilised for valuation.</p> |
| <p>Sub-Clause 13.2 Value Engineering</p> | <p>Replace the last para with the following;</p> <p>The proposal shall be prepared at the cost of the Contractor and shall include the items listed in Sub-Clause 13.3 [Variation Procedure]. The Employer may or may not accept the proposal at its sole discretion.</p> <p>Add the following paragraph at the end of Sub-Clause:</p> <p>“The value engineering proposal shall not impair the essential character, functions or characteristics of the Work, including service life, economy of operation, ease of maintenance, desired appearance, or design standards, safety standards and would not result in any reduction to the standard, or quality of Works, or the performance of the Contractor and his obligations under the Contract.”</p> |
| <p>Sub-Clause 13.3 Variation Procedure</p> | <p>Replace the last sentence of the para coming after para (c) with the following;</p> <p>The Contractor shall not delay any other work or related work to the extent required whilst awaiting a response.</p> <p>Delete the last sentence of the last para and then insert the following as a separate last para;</p> <p>In the event, the Contractor, without due process stipulated under the above Sub-Clauses, adopts any variation on his own and minimizes his cost of execution of the Works, the Employer, without prejudice to the other clauses herein, may serve a notice on the Contractor and proceed in accordance with Sub-Clause 2.5 [Employer's Claims] and 3.5 [Determinations] to agree or determine adjustments to the Contract Price in this regard. However, the Contractor is not discharged of any of his obligations under the Contract or otherwise.</p> <p>Add the following at the end of Sub-Clause:</p> |

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| | <p>“For varied Works of items due to Variation as per Sub-Clause 1.1.6.8, the rates arrived as per DSR (Delhi Schedule of Rates)-2018 + 55% shall be utilised for valuation. In the absence of relevant items / works, determination of adjustment to the Contract Price shall be based on the following:</p> <ol style="list-style-type: none"> a. Inputs of man-days, Contractor’s Equipment hours and quantities of materials; b. (i) Prevailing market rates for materials and hiring of Contractor’s Equipment; (ii) Rates being paid by the Contractor for unskilled, semi-skilled and skilled workers as per the records maintained by the Contractor in accordance with the Laws; c. Contractor’s overheads and profit at the rate of 10 (ten) per cent of the cost arrived at on the basis of (a) and (b) above; and d. Applicable taxes. <p>No price adjustment shall apply.</p> <p>The approval for Variation shall state the period of extension of Time for Completion, if any, allowed for the Variation. If no extension of Time for Completion is allowed, the same shall be stated.</p> |
| <p>Sub-Clause 13.5 Provisional Sums</p> | <p><i>Delete the Sub-Clause in its entirety</i></p> |
| <p>Sub-Clause 13.7 Adjustments for Changes in Legislation</p> | <p><i>Replace the Sub-Clause with the following;</i></p> <p>If, after the date of signing the Contract there occur in the Country in which the Works are being or are to be executed, changes to any National or State Statute, Ordinance, Decree or other Law or any regulation or bye-law of any local or other duly constituted authority, or the introduction of any such State Statute, Ordinance, Decree, Law, regulation or bye-law, which causes additional or reduced cost to the Contractor towards Levies and Duties, in the execution of the Contract, such additional or reduced cost shall, after due consultation with the Employer and the Contractor, be determined by the Employer / Employer’s Representative, and shall be added to or deducted from the Contract Price and the Employer / Employer’s Representative shall notify the Contractor accordingly. This Sub-Clause shall not apply to any labour / industrial related legislation and the Contractor shall bear all direct and indirect costs of such labour / industrial legislation. In addition, any benefit by reduction in the taxes or levies or duties by virtue of any order or direction of the competent authority shall be passed on to the benefit of the Employer.</p> |
| <p>Sub-Clause 13.8 Adjustments for Changes in Costs</p> | <p><i>Replace the Sub-Clause with the following;</i></p> <p>The Contractor shall not be entitled to claim additional payment due to rises or falls in the cost of labour, Goods and any other inputs to the Works.</p> |
| <p>Sub-Clause 14.1 The Contract Price</p> | <p><i>Add the following after the last paragraph;</i></p> <p>“The Contract Price includes all duties, taxes, royalties, premiums for various insurances, licenses and fees that may be levied in accordance with the Laws and regulations in force as on the Base Date on the Contractor's Equipment, Plant, Materials and supplies acquired for the purpose of the Contract and on the services performed under the Contract.</p> <p>Nothing in the Contract shall relieve the Contractor from its responsibility to pay any tax including any tax that may be levied in India on profits made by it in respect of the Contract.”</p> |

**Sub-Clause 14.2
Advance Payment**

Replace the Sub-Clause with the following;

The Employer shall make an Advance Payment, as an interest bearing loan for mobilization and design, when the Contractor submits a guarantee in accordance with this Sub-Clause. The rate of interest, the total Advance Payment, the number and timing of instalments (if more than one), and the applicable currencies and proportions shall be as stated in the Appendix to Tender.

Unless and until the Employer receives this guarantee, or if the total Advance Payment is not stated in the Appendix to Tender, this Sub-Clause shall not apply.

The Employer shall issue an Interim Payment Certificate for the first instalment after receiving a Statement (under Sub-Clause 14.3 [Application for Interim Payment Certificates]) and after the Employer receives: (i) the Performance Security in accordance with Sub-Clause 4.2 [Performance Security]; and (ii) a bank guarantee in amounts and currencies equal to 110% of the advance payment. This guarantee shall be in a form as approved by the Employer and issued by a Scheduled commercial bank branch in Kochi, India.

The Contractor shall ensure that the guarantee is valid and enforceable until the advance payment has been repaid, but its amount may be progressively reduced by the amount repaid by the Contractor as indicated in the Payment Certificates. If the terms of the guarantee specify its expiry date, and the Advance Payment has not been repaid by the date 28 days prior to the expiry date, the Contractor shall extend the validity of the guarantee until the advance payment has been repaid.

The Advance Payment shall be repaid through percentage deductions in Payment Certificates. Unless other percentages are stated in the Appendix to Tender:

- (a) deductions shall commence from the Payment Certificate in which the total of all certified payments (excluding the advance payment and deductions and repayments of retention) exceeds 10% (ten percent) of the Accepted Contract Amount, until such time as the advance payment including interest has been repaid; always provided that the Advance Payment including interest shall be completely repaid prior to the time when 80% of the Accepted Contract Amount has been certified for payment; and
- (b) deductions shall be made at the amortisation rate of ten percent (10%) of the amount of each Payment Certificate (excluding the advance payment and deductions and repayments of retention) in the currencies and proportions of the Advance Payment, until such time as the Advance Payment has been repaid.

If the advance payment has not been repaid prior to the issue of the Taking-Over Certificate for the Works or prior to Termination under Clause 15 [Termination by Employer], Clause 16 [Suspension and Termination by Contractor] or Clause 19 [Force Majeure] (as the case may be), the whole of the balance then outstanding shall immediately become due and payable by the Contractor to the Employer.

The Advance Payment shall be used by the Contractor exclusively for mobilization and design including the acquisition of new Contractor's Equipment, materials and

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| | <p>personnel to be used in the execution of the Works. Should the Contractor misappropriate any portion of the Advance Payment, it shall become due and payable immediately, and no further advance will be made to the Contractor thereafter. The term “misappropriate” in the above context would include, renewal of or transfer of any of the advance payment so drawn for investment outside the Project account. The Contractor will submit a utilization certificate specifying the usage of the sums so drawn to the Employer, supported by complete documentary evidence prior to release of each subsequent instalment, if any, and within 6 months from the date of release of all such Advance Payments.</p> <p>Notwithstanding, the Employer is also entitled to claim under this Advance Payment, Security in accordance with the terms of the Performance Security.</p> |
| <p>Sub-Clause 14.3 Application for Interim Payments</p> | <p><i>Replace the Sub-Clause with the following;</i></p> <p>The Contractor shall submit a Statement in three hard and soft copies to the Employer at end of each period, in a form approved by the Employer, showing in detail the amounts to which the Contractor submits the statement, together with supporting documents which shall include the relevant report on progress. All paper copies shall bear the original signatures of the Contractor.</p> <p>The Statement shall include the following items as applicable:</p> <ul style="list-style-type: none">a) The estimated Value of the Works executed during the period with all supporting details like measurements, sketches, drawings, approvals, calculations etc. so that payment can be verified by the Engineer as well as by the Employer.b) Deduction of 5% of the amount to which the Contractor is entitled under para (a) above as Retention Money.c) Deduction of 10% of the amount to which the Contractor is entitled under para (a) above as repayment of Advance Payment. If the Advance Payment has not been repaid in full prior to the issue of the Taking-Over Certificate for the Works or prior to Termination under Clause 15, Clause 16 or Clause 19 as the case may be, the whole of the balance/ then outstanding shall become due and payable by the Contractor and the Employer is entitled to recover such outstanding Advance payment under the said bank guarantee, without notice to the Contractor.d) Deductions, other than pursuant to Sub-clause 8.7 of any sums which may have become due and payable by the Contractor to the Employer.e) Deduction of amounts included in previous Statements.f) Deduction of Income Tax as per the relevant provisions of the Income Tax Act and or as per the advice of the Income Tax Authority.g) Submission of relevant valid policies of insurance for CAR, Third Party, Workmen’s Compensation Policies and any other detail required by Employer. |

**Sub-Clause 14.4
Schedule of Payments**

Replace the Sub-Clause with the following;

The Employer is not bound to make any payment under this Sub-Clause if the gross work done amount for the relevant bill is less than **2% of the Contract Value**.

Notwithstanding the terms of Sub-clause 14.2 or any other Clause of this Contract, no amount shall be paid by the Employer until he has received and approved the Performance Security.

If anything supplied or work done by the Contractor is not in accordance with the Contract, the cost of rectification or replacement may be withheld until rectification or replacement has been completed; and/or

If the Contractor fails to comply with Sub-clause 8.2, Delay Damages shall be recovered in accordance with Sub-clause 8.7.

If the Contractor was or is failing to perform any work or obligation in accordance with the Contract, and has been so notified by the Employer, save as to the extent provided herein, the value of this work or obligation may be withheld until the work or obligation has been performed.

The Employer may make any correction or modifications that should properly be made to any amount previously considered due. Payment shall not be deemed to indicate the Employer's acceptance, approval, consent or satisfaction.

The Employer shall make interim payments to the Contractor under Sub-Clause 14.6 on the basis of the estimated value of the Works executed as determined in accordance with the following procedure:

- (a) The Schedule of Payments is described in detail in Section 5: Schedule of Payments / Appendix to Tender. The Schedule of Payments lays down the frame work for estimating the value of stages of work completed for identified Cost Centres. On the basis of the identified Cost Centres, payment shall be released to the Contractor after completion of the stage of work as described therein. The description of items of work in the Schedules does not limit in any way the Contractor's obligations under the Contract to provide all the Works described in the Employer's Requirements.
- (b) The Contractor shall base its claim for interim payment for each stage for various items of the Works on completion till the end of the period for which the payment is claimed, supported with documents and an up-dated programme in accordance with the Employer's Requirements.
- (c) The weightage/percentage assigned to Cost Centre will apply only to the Accepted Contract Amount stated in the Contract Agreement. It shall not apply to any additions or omissions to the Accepted Contract Amount arising from the issue of any Variation Orders. Each Variation Order shall specify the manner of interim payments and completion of stages applicable to it.
- (d) Any item/Stage of payment not included/covered in the Schedule of Payments shall be deemed to be included in other items/stages of the Schedule of Payments and shall not be paid separately.

Sub-Clause 14.5

Delete the Sub-Clause;

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| Plant and Materials intended for the Works; | |
| Sub-Clause 14.8 Delayed Payment | <i>Delete the Sub-Clause;</i> |
| Sub-Clause 14.9 Payment of Retention Money | <p><i>Replace the Sub-Clause with the following;</i></p> <p>When the Taking Over Certificate has been issued for the Works, and the Works have passed all specified tests (including the Tests after completion, if any), the Retention Money shall be paid to the contractor. However prior to the release of payment the contractor shall be required to provide Bank Guarantee of amount equal to 5% of the Contract Value towards Additional Performance Security. This Additional Performance Security shall also be released along with the Performance Security submitted by the Contractor upon signing of the contract.</p> |
| Sub-Clause 14.15 Currencies of Payment | <p><i>Replace the Sub-Clause with the following;</i></p> <p>The Contract shall be designated in the quoted and agreed currencies and all payments shall be effected only in the same currencies, i.e., Indian Rupees.</p> |
| Sub-Clause 15.2 Termination by Employer | <p><i>In sub-paragraph (a) of 1st paragraph insert words “or with Sub-Clause 4.25 [Validity of Integrity Pact]” between the words “Security)” and “or”.</i></p> <p><i>Insert the following paras as paras (g), (h) and (i) in the Sub-Clause;</i></p> <ul style="list-style-type: none"> (g) breaches or fails to honour any of the obligations under the Contract and/or plainly demonstrates misconduct or negligence or intention not to comply with the instruction of the Employer in connection with the Contract’ (h) fails either to complete the Works in accordance with the Contract before the cap of amount of Delay Damages as agreed herein and/or to accelerate the progress of the Works to the satisfaction of the Employer; (i) any one employed by it or acting on its behalf (whether with or without the knowledge of the Contractor) breaches any of the provisions of the Integrity Pact or the Contract or any one employed by it or acting on its behalf commissions any offence, as defined in Chapter IX of the Indian Penal Code, 1860 or the Prevention of Corruption Act 1988 or any other act enacted for the prevention of corruption. <p><i>In the para that begins with “In any of these events” and ends with “..... the Contract immediately”, replace the last sentence with the following;</i></p> <p>However, in the case of sub-paragraph (e) or (f), the Employer, may by one day notice Terminate the Contract.</p> |
| Sub-Clause 15.4 Payment after Termination | <p><i>Delete the Sub-Clause 15.4 and substitute with the following;</i></p> <p>“After a Notice of Termination under Sub-Clause 15.2 [<i>Termination by Employer</i>] has taken effect, the Employer may:</p> <ul style="list-style-type: none"> (a) proceed in accordance with Sub-Clause 2.5 [<i>Employer's Claims</i>]; (b) withhold further payments to the Contractor until the actions in accordance with the following sub-paragraphs (i), and (ii) are completed; |

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| | <p>(i) encash and forfeit the whole of the amounts of Performance Security and Retention Money and take possession of Plant and Materials delivered to Site, for which payment has been made by the Employer;</p> <p>(ii) encash and appropriate the bank guarantee for the Advance Payment to recover the outstanding amount, if any, of the Advance Payment and / or other outstanding amount; and/or</p> <p>(c) withhold further payments to the Contractor until the costs of design, execution, completion and remedying of any defects, damages for delay in completion (if any), and all other costs incurred by the Employer, have been established;</p> <p>(d) recover from the Contractor, any losses and damages incurred by the Employer and any extra costs of completing the Works, after allowing for any sum due to the Contractor under Sub-Clause 15.3 [<i>Valuation at Date of Termination</i>].</p> <p>(e) recover any losses, damages, extra costs and any outstanding amounts against the Contractor which shall immediately become due and payable by the Contractor to the Employer. and pay the balance, if any, to the Contractor.</p> <p>The Parties hereby agree that the damages stated in sub-paragraph (d) above are genuine pre-estimate of the losses suffered by the Employer and are not by way of penalty”.</p> |
| <p>Sub-Clause 16.1 Contractor's Entitlement to Suspend Work.</p> | <p><i>Delete the Sub-Clause.</i></p> |
| <p>Sub-Clause 16.2 Termination by Contractor</p> | <p><i>Delete paras (a), (b), (d) and (e).</i></p> <p><i>Delete the last sentence of the penultimate para of the Sub-Clause.</i></p> |
| <p>Sub-Clause 16.4 Payment on Termination</p> | <p><i>Replace the first para with the following;</i></p> <p>After a Notice of Termination under Sub-Clause 16.2 [Termination by Contractor] has taken effect, the Employer, save as to the extent provided herein otherwise, shall promptly:</p> <p><i>Delete para (c).</i></p> |
| <p>Sub-Clause 17.1 Indemnities</p> | <p><i>Replace the last para with the following;</i></p> <p>The Employer shall indemnify and hold harmless the Contractor, the Contractor's Personnel, and their respective agents, against and from all claims, damages, losses and expenses (including legal fees and expenses) in respect of: (1) bodily injury, sickness, disease or death, which is attributable to any negligence, willful act or breach of the Contract by the Employer, the Employer's Personnel, or any of their respective agents.</p> |
| <p>Sub-Clause 17.4 Consequences of Employer's Risks</p> | <p><i>Replace the second para with the following;</i></p> <p>If the Contractor suffers delay, the Contractor shall give a further notice to the Employer and shall be entitled subject to Sub-Clause 20.1 [Contractor's Claims] to:</p> <p><i>Delete para (b).</i></p> |

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| <p>Sub-Clause 17.5 Intellectual and Industrial Property Rights</p> | <p>Add the following new paragraph at the end of Sub-Clause 17.5:</p> <p>“The Contractor shall, at its own cost, ensure that it has all necessary rights and licenses to intellectual property subsisting in any matter, thing or process used, or to be used in the design or execution of the Works by the Contractor or delivered, or to be delivered, by it to the Employer under the Contract.”</p> |
| <p>Sub-Clause 17.6 Limitation of Liability</p> | <p>Delete the words “Sub-Clause 4.20 [Employer’s Equipment and Free-Issue Material],” in the penultimate para of the Sub-Clause.</p> <p>Replace the words “Particular Conditions” with the word “Contract” in the penultimate para of the Sub-Clause.</p> |
| <p>Sub-Clause 18.1 General Requirements for Insurance</p> | <p>Insert the following para at the end of the Sub-Clause.</p> <p>The Insuring Party shall be the Contractor. Insurances shall be affected with an insurance company approved by the Employer and on approved terms.</p> |
| <p>Sub-Clause 18.2 Insurance for Works and Contractor’s Equipment</p> | <p>Replace the words “Particular Conditions” in fourth para and para (d), with the word “Contract”.</p> <p>Delete the words “, subject to Sub-Clause 14.5 [Plant and Materials intended for the Works]” from the sub-para (e) (iv).</p> <p>Replace the last para with the following para at the end of the Sub-Clause.</p> <p>Contractor’s All Risk (CAR) policy for the Works, Plant and Contractor’s Equipment, should be obtained by the Contractor from an Insurance Company approved by the Employer, for the value of the work including cost of materials supplied by the Employer. Insurance shall be in the joint names of the Employer and the Contractor.</p> |
| <p>Sub-Clause 18.3 Insurance against Injury to Persons and Damage to Property</p> | <p>Add the following sentences to second para of the Sub-Clause;</p> <p>The minimum amount of the insurance shall be INR 15,00,000 per occurrence with unlimited number of occurrences. This shall cover the loss of the Employer / its personnel or to any Contractor employed by the Employer and working in the Contractor’s area.</p> <p>Replace the words “Particular Conditions” with the word “Contract” in the third para of the Sub-Clause.</p> <p>Add the following at the end of this Sub-Clause;</p> <p>The insurance policy shall include a cross liability clause such that the insurance shall apply to the Employer, the Contractor and his SubContractors (wherever applicable) as separately insured.</p> |
| <p>Sub-Clause 18.4 Insurance for Contractor’s Personnel</p> | <p>Insert the following para at the end of the Sub-Clause;</p> <p>The Insurance shall also cover any person employed by the Employer or any other of the Employer’s personnel.</p> |
| <p>Sub-Clause 19.1 Definition of Force Majeure</p> | <p>Replace the first para with the following;</p> <p>In this clause, “Force Majeure” shall mean the events or circumstances listed herein from (i) to (v), so long as conditions (a) to (d) below are satisfied;</p> <p>Replace the para that comes after the para (d) with the following para;</p> |

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| | <p>Subject to satisfaction of the above conditions; the following shall only be the events or circumstances of Force Majeure:</p> |
| <p>Sub-Clause 19.2 Notice of Force Majeure</p> | <p>Replace the last sentence of the first para with the following;</p> <p>The Notice shall be given within 14 days of the earliest of either of the following;</p> <ul style="list-style-type: none"> (i) the party became aware of the event / circumstance constituting Force Majeure; or (ii) occurring the event or circumstance constituting Force Majeure, <p>Replace the second para with the following para;</p> <p>The Party, unless gives Notice as above within such period of 14 days, shall not be excused performance of such obligation so long as such Force Majeure prevents it from performing them and / or entitled for a remedy available, if any, and the other party shall be discharged from all liability in connection with such Force Majeure.</p> |
| <p>Sub-Clause 19.3 Duty to Minimise Delay</p> | <p>Rename the name of the Sub-Clause as under;</p> <p>19.3 Duty to Avoid and/or Minimise Delay</p> <p>Replace the first para with the following para;</p> <p>Each Party shall at all times use all reasonable endeavors to avoid or minimize any stoppage or delay in the performance of the Contract as a result of or due to Force Majeure.</p> |
| <p>Sub-Clause 19.4 Consequences of Force Majeure</p> | <p>Replace the Sub-Clause with the following;</p> <p>If the Contractor is prevented from performing any of his obligations under the Contract by Force Majeure of which Notice has been given under Sub Clause 19.2 [Notice of Force Majeure], and suffers delay by reason of such Force Majeure, the Contractor shall only be entitled subject to Sub Clause 20.1 [Contractor's Claims] to an extension of time (without entitlement for any Cost) for the equivalent period of Force Majeure event, if completion is or will be delayed under Sub Clause 8.4 [Extension of time for Completion].</p> <p>Save and except as expressly provided in this Sub-Clause 19.4 neither Party hereto shall be liable in any manner whatsoever to the other Party in respect of any direct and/or consequential delay, loss, damage, cost, expense, claims, demands and proceedings relating to or arising out of occurrence or existence of any event of Force Majeure.</p> |
| <p>Sub-Clause 19.6 Optional Termination, Payment and Release</p> | <p>Replace second para with the following;</p> <p>Upon such Termination, the Employer, subject to Sub-Clause 20.1, shall pay to the Contractor:</p> <p>Replace the word "work" in para (a) with the words "Permanent Works".</p> <p>Replace para (b) with the following para;</p> <ul style="list-style-type: none"> (b) The value of materials ordered for consumption in the Permanent Works, which have been delivered to the Contractor, or of which the Contractor is liable to accept delivery. This material shall become the property of (and be at the risk of) the Employer when paid for by the Contractor shall place the same at the |

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| | Employer's disposal; Delete paras (c), (d) and (e). |
| Sub-Clause 20.1 Contractor's Claims | <p>Replace the Sub-Clause with the following;</p> <p>If the Contractor considers himself to be entitled to any extension of the Time for Completion and/or any additional payment, under any clause of these Conditions in connection with the Works, the Contractor shall give Notice to the Employer referring to such clause and describing the event giving rise to the claim and all supporting particulars / documents for whole of the claim as relevant to such event. The Notice shall be given as soon as practicable, the Contractor became aware, or should have become aware, of the event, but not later than 28 days after occurrence of the event giving rise to the claim.</p> <p>If the Contractor fails to give such Notice within the said period of 28 days, the Time for Completion shall not be extended and/or the Contractor shall not be entitled to additional payment, and the Employer shall be discharged from all liability in connection with such claim. Unless and until all the documents and supporting particulars are supplied to substantiate whole of the claim so notified, the Employer shall have no obligation to proceed with / respond to the Notice of claim of the Contractor. Otherwise, the following conditions of this Sub-Clause shall apply:</p> <p>Upon receipt of all documents and supporting particulars as above, the Employer under this Clause shall respond to the Notice of the Contractor within 42 days, either by rejecting or considering the entitlement of the Contractor for a claim either in full or in part. In the event of rejection, the Contractor, if dissatisfied with the rejection by the Employer of the claim, shall notify its dissatisfaction under Sub-Clause 3.5 and the relevant remaining provisions therein shall apply.</p> <p>The Employer, if considers entitlement of a claim either in full or in part, shall proceed in accordance with Sub-Clause 3.5 to agree or determine the entitlement of the Contractor for the number of days towards extension of time and/or the amount towards additional payment, if any.</p> <p>The Contractor if satisfied with the determination of the Employer of the amount towards additional payment, shall submit a separate application for payment (and not along with Application for Interim Payment) for such determined amount, and/or shall submit a revised programme for completion of the Works, in satisfaction of such his claim.</p> <p>The Contractor if dissatisfied with the determination of the Employer on extension of time and/or additional amount the provisions of Sub-Clause 3.5 shall apply.</p> |
| Sub-Clause 20.2 Appointment of the Dispute Adjudication Board | Delete the Sub-Clause; |
| Sub-Clause 20.3 Failure to Agree Dispute Adjudication Board | Delete the Sub-Clause; |
| Sub-Clause 20.4 Obtaining Dispute Adjudication Board's Decision | Delete the Sub-Clause; |
| Sub-Clause 20.5 Amicable Settlement | Delete the words "under Sub Clause 20.4 above" in the first sentence of the Sub-Clause. |

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| <p>Sub-Clause 20.6 Arbitration</p> | <p><i>Replace the Sub-Clause with the following;</i></p> <p>Any dispute in respect of which Amicable Settlement has not been reached within the period stated in Sub-Clause 20.5, shall be finally and conclusively settled by Arbitration under the Arbitration and Conciliation Act, 1996 as amended by the Arbitration and Conciliation (Amendment) Act 2015 or any statutory amendment thereof by appointing two Arbitrators one by each Party and a Presiding Arbitrator to be appointed by the said Arbitrators.</p> <p>The Contractor shall continue to attend to discharge all his obligations under the Contract during pendency of the Arbitration proceedings. Arbitration shall commence only after the issue of "Taking-Over Certificate".</p> <p>Any such Arbitration proceeding shall be within the exclusive jurisdiction of court of law at Kochi, India. The place of Arbitration shall be Kochi and the Language of Arbitration shall be English.</p> <p>In the event of any dispute or difference relating to the interpretation and application of the provisions of commercial contract(s) between Central Public Sector Enterprises (CPSEs) / Port Trusts inter se and also between CPSEs and Government Departments / Organizations (excluding disputes concerning Railways, Income Tax, Customs & Excise Departments), such dispute or difference shall be taken up by either Party for resolution through AMRCD as mentioned in DPE OM No.4(1)/2013-DPE(GM)/FTS-1835 dated 22-05-2018.</p> |
| <p>Sub-Clause 20.7 Failure to Comply With Dispute Adjudication Board's Decision</p> | <p><i>Delete the Sub-Clause;</i></p> |
| <p>Sub-Clause 20.8 Expiry of Dispute Adjudication Board's Appointment</p> | <p><i>Delete the Sub-Clause;</i></p> |
| <p>New Sub-Clause 20.9 Settlement of Disputes through Conciliation</p> | <p><i>Insert the following as new Sub-Clause 20.9;</i></p> <p>In the event of any dispute or differences between the Parties which could not be resolved amicably by mutual consultations / Arbitration, then the Chairman of Cochin Port Trust may refer such unresolved disputes or differences to a Conciliation Committee/Council comprising of independent subject experts, set up by the Port Trust to enable speedy disposal of pending / new cases. Recourse to such Conciliation shall be open before, during or after the Arbitration proceedings. The Award of the Conciliation Committee/Council, if agreed by both the Parties, shall then be placed for consideration of the Board of Trustees of Cochin Port subject to the delegation of powers.</p> |
| <p>New Clause 21 Removal of debris or Craft or Plant</p> | <p><i>Insert the following as Clause 21;</i></p> <p>The Contractor shall ensure that none of his construction material or debris have been discharged or thrown or fallen into any of the Terminal areas and/or any of the work sites of the other contractors. In case of failure, all direct and indirect risks and costs and consequences shall be to the account of the Contractor only. It is also the obligation of the Contractor to remove or clear the same at his own cost and risk,</p> <p>The Contractor shall forthwith at his own cost, raise and remove any craft or plant (floating or otherwise belonging to him or to any Sub-Contractor employed by him including also any plant which is held by the Contractor or any Sub-Contractor under Agreement for hire or hire purchase) which may be sunk in the course of the construction, completion or maintenance of the Works or otherwise deal with the same as the Employer</p> |

| | |
|--|--|
| | <p>may direct until the same shall be raised and removed. The Contractor shall set all such buoys and display at night such lights and do all such things for the safety of navigation as may be required by the Employer in the event of the Contractor not carrying out the obligation imposed upon him by this Clause, the Employer may buoy and light such sunken craft or plant and raise and remove the same and the Contractor shall refund to the Employer all costs incurred in connection therewith.</p> |
| <p>New Clause 22 Contractor's Temporary Moorings</p> | <p><i>Insert the following as Clause 22;</i></p> <p>Should the Contractor for the purpose of this Contract desire to provide temporary mooring for his marine fleet / craft and floating plant, he will be allowed to do so in position and manner approved by the Employer. The Contractor shall not lay such moorings so as to interfere with the traffic in the waterways and such moorings shall be removed, if any, when required by the Employer.</p> <p>The Employer may permit for moorings as above (only for the marine fleet / craft and floating plant required for the Works) free of charge till the date of Time for Completion stipulated herein or Employer's approval for demobilization, whichever is earlier. The Contractor shall pay commercial rent for such marine fleet / craft / floating plant beyond the said date, however, subject to prior approval of the Employer.</p> |
| <p>New Clause 23 Life Saving Appliances & First Aid Equipment</p> | <p><i>Insert the following as Clause 23;</i></p> <p>The Contractor shall provide and maintain for use at all times upon the Works, proper and efficient life saving appliances and first aid equipment in accordance with the requirements of the Works and/or of ILO, Convention No. 62.</p> |
| <p>New Clause 24 Bribes, Commission</p> | <p><i>Insert the following as Clause 24;</i></p> <p>Any bribe, commission, gift or advantage given, promised or offered by or on behalf of the Contractor or his partner, agent or servant or anyone on his or their behalf to any officer, servant, representative or agent of the Employer or to any person on his behalf in relation to obtaining benefits to the execution of this or any other Contract with the Employer, shall in addition to any criminal liability which he may incur, subject the Contractor to the Termination of this and all other Contracts with the Employer and also to the payment of any loss or damage resulting from such Termination. The Employer shall be entitled to deduct the amounts so payable from any money otherwise due to the Contractor under this or any other Contract. Any question or dispute as to the occurrence of any offense under the present Clause shall be settled by the Employer in such manner and on such evidence or information as he shall think fit and consider sufficient and his decision shall be final and conclusive.</p> |
| <p>New Clause 25 Drawings, Photographs and videos of the Works and the Terminal including its operations.</p> | <p><i>Insert the following as Clause 25;</i></p> <p>The Contractor shall not disclose details of drawings furnished to him and works on which he is engaged, without the approval of the Employer. No photograph or video of the Works or any part thereof or plant employed thereon or the Terminal / operations at Terminal shall be taken or permitted by the Contractor to be taken by any of his employees or any employee of his Sub-Contractors without the approval of the Employer and no such photograph shall be published or otherwise circulated without the approval of the Employer. Otherwise, the Employer, save to the extent provided herein, shall have the right to take all appropriate and suitable measures against the Contractor and such of his personnel.</p> |
| <p>New Clause 26 Pollution</p> | <p><i>Insert the following as Clause 26;</i></p> <p>Subject and without prejudice to any other provisions of the Contract, the Contractor shall assume / take all responsibilities / precautions as below.</p> |

| | |
|---|--|
| | <p>(a) In connection with the sea or any harbours, rivers, streams, waterways, drains, water courses, reservoirs and the like to prevent;</p> <p>(i) Pollution of the water so as to affect adversely the quality or appearance thereof or cause injury or death to animal and plant life.</p> <p>(b) In connection with underground water resources including percolating water, prevent:</p> <p>(i) Any interference with the supply to or extractions from such sources.</p> <p>(ii) Pollution of the water so as to affect adversely the quality thereof.</p> |
| <p>New Clause 27 Customs, Security & Safety Requirements at Terminal</p> | <p><i>Insert the following as Clause 27;</i></p> <p>The Contractor shall comply with all regulations imposed by the Authorities with regard to Customs, Security and Safety Requirement in respect of the passage of plant, materials and personnel. The Contractor shall execute his Works in such a way that existing Terminal works / operation are not disturbed. The Contractor shall not be entitled to any extension of time or additional payment in this regard.</p> |
| <p>New Clause 28 Interface Obligation</p> | <p><i>Insert the following as Clause 28;</i></p> <p>The Contractor shall acknowledge that the Works are part and parcel of other contracts / works being / to be executed by other contractors employed / to be employed by the Employer. The Contractor undertakes to manage and be responsible for all interfaces of the Works with other contractors. Further, the Contractor indemnifies the Employer from any of claims, of himself and/or the other contractors, including towards any business loss without limitation under Clause 17.6 in connection with the interface with other contracts.</p> |

APPENDIX TO TENDER

| Item | GC Sub-Clause | Entry |
|--|-------------------|--|
| Employer's Name and Address | 1.1.2.2 & 1.3 (b) | The Chief Engineer, Cochin Port Trust, Willingdon Island, Kochi – 682009, Kerala, India. Telephone: +91-0484 -2666414 / 0484 258 2400, Fax No.: +91-0484-2666414 E-mail: coptce@gmail.com Website: www.cochinport.gov.in |
| Contractor's Name and Address | 1.1.2.3 & 1.3 (b) | Shall be entered before signing the Contract Agreement |
| Commencement Date | 1.1.3.2 | 07 th (Seventh) day after the date of issue of 'Letter of Award' by the Employer to the Contractor. |
| Communications- Electronic transmission systems | 1.3(a) | If communication is through fax or e-mails, it should be confirmed through hard copy (paper) within 48 hours of transmission of fax or email. In case of delayed confirmation, the date and time of confirmation shall be deemed to be the date and time of hard copy (paper) communication delivered. |
| Governing Law & Legal Jurisdiction | 1.4 | Laws of Republic of India Jurisdiction of court of law at Kochi, Kerala |
| Ruling Language | 1.4 | English |
| Language for Communications | 1.4 | English |
| Time for Access to the Site | 2.1 | Within (14) days from the Commencement Date subject to submission of Performance Guarantee |
| Amount of Performance Security | 4.2 | 5% of the Accepted Contract Amount in Indian Rupees in the form of Bank Guarantee on any Nationalized Bank acceptable to CoPT |
| Normal Working Hours | 6.5 | Eight (8) working hours shift in a day and total 48 (Forty eight) working hours in a week. |

| Item | GC Sub-Clause | Entry |
|--|---------------|---|
| Time for Completion of the Work | 8.2 | 48 months for whole of the Works Note: Time for Completion of Milestones is stated in Sub-Clause 8.2 |
| Delay Damages for the Works | 8.7 | For Milestone 1: Rs. 1,00,000 per day For Milestone 2: Rs. 3,00,000 per day For Milestone 3: Rs. 5,00,000 per day For Milestone 4: Rs. 5,00,000 per day For Whole of the Works: Rs. 8,00,000 per day |
| Maximum Amount of Delay Damages | 8.7 | 10% (ten percent) of the Accepted Contract Price |
| Defects Notification Period | 11.1 | 24 months |
| Total Advance Payment, Number and Timings of Instalments | 14.2 / 14.6 | Total 10% (Ten percent) of the Accepted Contract Amount. Mobilization Advance The Employer shall pay, on written request from the Contractor, an interest bearing Mobilization Advance up to Ten percent (10%) of the Accepted Contract Amount. The Mobilization Advance shall be released in two instalments as under. (a) First Instalment: Up to (Five) 5 percent of Accepted Contract Amount: On Submission of Performance Security and commencement of mobilization process; and (b) Second Instalment: Up to (Five) 5 percent of Accepted Contract Amount: On achievement of Milestone 1 completion. The Advance Payment will be released on submission of unconditional Bank Guarantee for an amount equivalent to one hundred ten percent (110%) of the component of the Advance Payment requested by the Contractor. The Bank Guarantee shall be issued by a Nationalized Bank or Scheduled commercial bank permitted to carry out business in India by the Reserve Bank of India and having a branch in Kochi. If the unconditional Bank Guarantee is issued by a bank located outside India, the issuing bank shall have a correspondent |

| Item | GC Sub-Clause | Entry |
|---|---------------|---|
| | | <p>bank located in Kochi, India authorized by RBI to conduct Government business in India, satisfactory to the Employer, to make it enforceable.</p> <p>The Bank Guarantee shall remain effective until the Advance Payment has been repaid pursuant to the provisions of Sub-Clause 14.2, but the amount thereof shall be progressively reduced by the amount repaid by the Contractor as indicated in Interim Payment Certificates issued in accordance with this Clause.</p> |
| Rate of Interest | 14.2 | Interest at SBI base rate per annum accrued on the unrecovered advance. For calculating interest, the period will be reckoned upto the date of authorisation for payment of the bills by the Employer. |
| Repayment of Advance Payment | 14.2 | 10% of value of each interim payment certificate |
| Percentage of Retention | 14.3 | 5% of value of each interim payment certificate |
| Limit of Retention Money | 14.3 | 5% of the Accepted Contract Amount |
| Minimum amount of Interim Payment Certificate | 14.4 / 14.6 | 2% of the Accepted Contract Amount |
| Currency of payment | 14.15 | In Indian Rupees ("INR") only |
| Periods for submission of Insurance: | | |
| a) evidence of insurance | 18.1 | At the Commencement Date of Works |
| b) relevant policies | 18.1 | 42 days from the Commencement Date |
| Maximum amount of deductibles for the insurance of the Employer's risks | 18.2 | INR 10,000 (INR Ten thousand) |
| Minimum amount of Third Party Insurance | 18.3 | INR 10,00,00,000 (INR Ten Crores) |

VOLUME-III
SECTION - 10
CONTRACT FORMS

FORM-A:

FORM OF AGREEMENT

AGREEMENT No. ... of

AGREEMENT FOR THE WORK OF RE-CONSTRUCTION OF NORTH JETTY AT NAVAL BASE, KOCHI

THIS AGREEMENT IS MADE on this, theday of BETWEEN THE BOARD OF TRUSTEES OF COCHIN PORT TRUST, a body corporate under the Major Port Trust Act, 1963 having office on Willingdon Island, Kochi – 682009 represented by its *Chief Engineer/*Deputy Chief Engineer/*Superintending Engineer Shri..... S/o aged years residing at Village Taluk District (hereinafter referred to as the Employer which expression shall include his successors, assignees and administrators in the office) of the one part and M/s. represented by Shri. aged S/o residing at Village Taluk District (hereinafter referred as "Contractors" which expression shall include their successors, assignees and administrators) of the other part.

WHEREAS the Employer invited Tenders for vide Tender Notice Dated and the Contractor submitted a Tender for the same giving rates subject to the terms and conditions etc. of the Tender Document.

AND WHEREAS the said Tender submitted by the Contractor has been accepted by the Employer vide Work Order No dated, issued to the Contractor while accepting their Tender.

NOW THESE PRESENTS WITNESSETH and the parties hereby agree as follows.

1. The tender submitted by the Contractor for execution for the Board, of the work specified in the under written memorandum within the time and at the tendered cost specified in such memorandum and in accordance in all respects with the Contract in writing referred to in Clause 1.1.1.1 of the "Particular Conditions" and with such materials as are provided for, by and in all other respects in accordance with such conditions is accepted.
2. It is mutually understood and agreed that, notwithstanding that the works has been sectioned, every part of it shall be deemed to be supplementary to and complementary of every other part and shall be read with it or into it.
3. The Contractor agreed to abide by and fulfill all the terms and provisions of the said Conditions of Contract or in default thereof forfeit and pay to the Board the sum of money mentioned in the said conditions.
4. The sum of Rs...../- [Rupees.....only) has been deposited by the Contractor with Financial Adviser and Chief Accounts Officer of the Port Trust as Performance Security: (a) the full value of which is to be absolutely forfeited to the Board in office without prejudice to any other rights or remedies of the said Board in office should the Contractor fail to commence the work specified in underwritten Memorandum or should the Contractor not deposit the full amount of security deposit specified in underwritten Memorandum otherwise the said sum of Rs...../- shall be retained by the Board as on account of such security deposit

as aforesaid; or (b) the full value of which shall be retained by the Board on account of the Security Deposit to execute all the works referred to in the Tender Documents upon the terms and conditions contained or referred to therein.

5. It is mutually agreed that the Tender submitted in its entirety shall form part of this Agreement. Apart from the Tender, the following shall also form part of the Agreement
- a) The Letter of Award;
 - b) Letters exchanged between the Employer and the Tenderer upto the issue of Letter of Award as separately listed and annexed here to; and
 - c) Replies to Pre-Bid Queries and amendments issued, if any.

MEMORANDUM

- | | | |
|--|---|--|
| a) General description of work | : | Re-construction of North Jetty at Naval Base, Kochi |
| b) Estimated cost | : | Rs. 461.6 Crores |
| c) Tendered cost | : | Rs. |
| d) Tender Bond | : | Rs. 4.62 Crores |
| e) Security Deposit | : | 10% of the Value of the Contract Awarded or the value of the work done whichever is higher [Performance Guarantee @5% and Retention Money @5%] |
| f) Percentage, if any, to be deducted from the bills | : | The Retention Money will be recovered from the first running bill onwards at the rate of 5% of the gross amount of each bill. |
| g) Time allowed for commencement of work from the date of receipt of work order | : | 15 days |
| h) Time allowed for the work from the date of commencement of work. | : | 48 months |
| i) Schedule, specifications, conditions, drawings etc. as per contents sheet attached. | : | |

IN WITNESS WHEREOF THE CONTRACTORhereunto set his hand and seal on behalf of M/s..... and on behalf of the Board of Trustees of COCHIN PORT TRUST, the CHIEF ENGINEER has set his hand and seal and common seal of Trustees has been hereunto affixed the day and year first written above.

CONTRACTOR

Signed, sealed and delivered

By Shri.....

Of M/s.....

(COMMON SEAL OF THE FIRM)

Signed and affixed seal in the presence of :

1) Signature with address :

2) Signature with address :

Signed, sealed and delivered by the

CHIEF ENGINEER

Cochin Port Trust

on behalf of Board of

Trustees of Port of Cochin.

EMPLOYER

Signed and affixed the common seal of

Board of Trustees of the Port of Cochin

In the presence of

1)

2)

FORM-B:

PROFORMA OF IRREVOCABLE BANK GUARANTEE FOR BID BOND

(To be submitted on Non-judicial Stamp Paper of appropriate value)

B.G. No. _____ Dated _____.

This Deed of Guarantee executed at _____ by _____ (Name of Bank) having its Head/Registered office at _____ (hereinafter referred to as "the Guarantor") which expression shall unless it be repugnant to the subject or context thereof include its executors, administrators, successors and assigns;

In favour of

The Board of Trustees of Cochin Port Trust (hereinafter called "the EMPLOYER"), having its office at Willingdon Island, Kochi – 682 009, which expression shall unless it be repugnant to the subject or context thereof include its executors, administrators, successors and assigns;

Whereas M/s. _____, a Company registered under the provisions of _____ having its registered office at _____ (hereinafter called "the Bidder") which expression shall unless it be repugnant to the subject or context thereof include its executors administrators, successors and assigns, has bid for the work of _____ **Re-Construction of North Jetty at Naval Base, Kochi (Tender No.T10/T-1910/2020-C)** (hereinafter referred to as "the Work").

Whereas in terms of the Tender Notice dated _____ (hereinafter referred to as "Tender Document") the Bidder is required to furnish to the Port Trust an unconditional and irrevocable Bank Guarantee for an amount of Rs.(Rupees only) as Bid Bond and the Guarantor has at the request of the Bidder agreed to provide such Guarantee being these presents:

Now this deed witnesseth that in consideration of the premises, We, _____ Bank hereby declare, undertake and agree as follows:

We as primary obligor shall, without demur, pay to the Port Trust an amount not exceeding Rs. (Rupees only), within 5 days of receipt of a written demand from the Port Trust stating that the Bid Bond has been forfeited in terms of Clause 1.20 of Section-1 (Instructions to Tenderers) of Tender Document. Any such demand made on us by the Port Trust shall be conclusive and absolute as regards the forfeiture of the Bid Bond and the amount due and payable under this Guarantee.

- a) The above payment shall be made by us without any reference to the Bidder or any other person and irrespective of whether the claim of the Port Trust is disputed by the Bidder or not.

- b) This Guarantee shall remain in full force for a period of 180 days from (date)*_____ or for such extended period as may be mutually agreed between the Port Trust and the Bidder and shall continue to be enforceable till all amounts which are demanded by the Port Trust under this Guarantee are paid.
- c) In order to give full effect to this Guarantee, the EMPLOYER shall be entitled to treat the Guarantor as the principal debtor and the obligations of the Guarantor shall not be affected by any variations in the terms and conditions of the Tender Document or other documents or by extension of time of performance of any obligations by the Bidder or any postponement for any time of the powers exercisable by the EMPLOYER against the Bidder or forebear or enforce any of the terms and conditions relating to non-compliance of the Tender Document by the Bidder and we shall not be relieved from our obligations by reason of any variation or extension being granted to the Bidder or forbearance or omission on the part of the EMPLOYER or any indulgence by the EMPLOYER to the Bidder to give such matter or thing whatsoever which under the law relating to sureties would but for this provision have effect of so relieving us.
- d) This Guarantee shall be irrevocable and shall remain in full force and effect until all our obligations under this Guarantee are duly discharged.
- e) The Guarantor has power to issue this Guarantee and the undersigned is duly authorised to execute this Guarantee pursuant to the power granted under _____

In Witness whereof the Guarantor has set its hands hereunto on the day, month and year first hereinabove written.

Signed and Delivered by _____

Bank by the hand of Shri_____

its _____ and authorised official

*Fill in the scheduled date of submission of bid

FORM-C:

PROFORMA OF IRREVOCABLE BANK GUARANTEE FOR PERFORMANCE SECURITY

(To be submitted on Non-judicial Stamp Paper of Rs.50/-)

Ref..... Bank Guarantee No.....

Date.....

To

The Chief Engineer,
Cochin Port Trust,
Willingdon Island, Kochi
Kerala

Dear Sirs,

In consideration of Cochin Port Trust having its office at Kochi, Kerala (hereinafter referred to as "Employer" which expression shall unless repugnant to the context or meaning thereof include its successors, administrators and assigns) having awarded the work of at Cochin Port to M/s..... with its Registered/Head Office at(hereinafter referred to as the "Contractor" which expression shall unless repugnant to the context or meaning thereof, include its successors, administrators, executors and assigns), a Contract by issue of Employer's Contract number..... dated..... the same having been unequivocally accepted by the Contractor resulting in

a Contract' bearing No..... dated..... valueat.....for..... and the Contractor having agreed to provide a Contract Performance Guarantee for the faithful performance of the entire Contract equivalent to..... to Employer.

We..... having its Head Office at.....(hereinafter referred to as the 'Bank' which expression shall, unless repugnant to the context or meaning thereof, include its successors, administrators, executors and assigns) do hereby guarantee and undertake to pay the Employer on demand any and all monies payable by the Contractor to the extent of..... as aforesaid at any time up to..... without any demur, reservation, contest, recourse or protest and/or without any reference to the Contractor. Any such demand made by Employer on the Bank shall be conclusive and binding notwithstanding any difference between Employer and Contractor or any dispute pending before any Court, Tribunal, Arbitrator or any other Authority.

The Bank undertakes not to revoke this guarantee during its currency without previous consent of Employer and further agrees that the guarantee herein contained shall continue to be in endorsable till the Employer discharges his guarantee. Employer shall have the fullest liberty without affecting in any way the liability of the bank under this guarantee from time to time to extend the time for performance of the Contract by Contractor. Employer shall have the fullest liberty, without affecting this guarantee, to postpone from time to time the exercise of any powers vested in them or of any right which they might have against Contractor and to exercise the same at any time in any manner, and either to enforce or to forebear to enforce any covenants contained or implied, in the Contract between Employer and Contractor or any other course of or remedy or security available to Employer. The Bank shall not be released of its obligations under these presents by any exercise by Employer of its liberty with reference to the matters aforesaid or any of them or by reason or any other acts of omission or commission on the part of Employer or any other indulgence shown by Employer or by any other matter or thing whatsoever which under Law would, but for this provision, have the effect of relieving the Bank.

The Bank also agrees that Employer at its option shall be entitled to enforce this Guarantee against the Bank as principal debtor, in the first instance without proceeding against Contractor and notwithstanding any security or other guarantee that Employer may have in relation to the Contractor's liabilities.

Notwithstanding anything contained herein above our liability under this guarantee is restricted to ----- and it shall remain in force upto and including 90 days after the expiry of defects liability period and shall be extended from time to time for such period, on whose behalf this guarantee has been given.

Dated this day of..... YYYY.....at.....

WITNESSES

(Signature)

(Signature)

(Name)

(Name)

(Designation with Bank Stamp)

FORM-D:

PROFORMA OF BANK GUARANTEE FOR ADVANCE PAYMENT

(To be submitted on Non-judicial Stamp Paper of Rs.50/-)

Ref.....

Bank Guarantee No.....

Date.....

To

The Chief Engineer,

Cochin Port Trust,

Willingdon Island, Kochi

Kerala

Sir,

In consideration of Cochin Port Trust having its Office at Kochi, Kerala (hereinafter referred to as the "EMPLOYER" which expression shall unless repugnant to the context or meaning thereof, include all its successors, administrators, executors and assigns) and having entered into a CONTRACT bearing No.....dated..... (hereinafter called the "CONTRACTOR" which expression unless repugnant to the context or meaning thereof, shall include all its successors, administrators, executors and assigns) and the CONTRACT having been unequivocally accepted by the Contractor for Re-Construction of North Jetty at Naval Base, Kochi and the EMPLOYER having agreed to make payment for Work advance to the Contractor for the performance of the above Contract, amounting to 5% of the contract value i.e. Rs..... against Bank Guarantee for 110% of the advance payment to be furnished by the Contractor, we..... (Bank)..... having its registered office at.... (hereinafter referred to as "the Bank" which expression shall unless repugnant to the context or meaning thereof, include all its successors, administrators, executors and assigns) do hereby guarantee and undertake to pay on demand to the EMPLOYER any or all monies..... to the extent of..... () in aggregate at any time without any demur, reservation, recourse, context or protest and/or without any reference to the CONTRACTOR. Any such demand made by the EMPLOYER on the Bank shall be conclusive and binding notwithstanding any difference between the EMPLOYER and the CONTRACTOR or any dispute/arbitration pending before any Court, Tribunal, Arbitrator or any other authority. We agree that Guarantee herein contained shall be irrevocable and shall continue to be enforceable until sixty days after contract period or sixty days after the extended period unless it is discharged earlier by the EMPLOYER in writing.

The EMPLOYER shall have the fullest liberty, without affecting in any way the liability of the Bank under this guarantee, from time to time to extend the time for performance of the contract by the CONTRACTOR, or vary the terms of the contract. The EMPLOYER shall have the fullest liberty without affecting this Guarantee to postpone, from time to time, the exercise of any power vested in them or of any right which they might have against the Contractor and to exercise the same at any time in any manner and either to enforce, or to forbear to enforce any covenants the contract between the EMPLOYER and the CONTRACTOR or any other course of remedy or security released of its obligations under these presents by any exercise by the EMPLOYER of its liberty with reference to matters aforesaid

or any of them or by reason of any other act or forbearance or other acts of EMPLOYER or omission on the part of

the EMPLOYER or any other indulgency shown by the EMPLOYER or by any other matter or thing whatsoever, which under law would, but for this provision, have the effect of relieving the Bank. The Bank also agrees that the EMPLOYER at its option shall be entitled to enforce this Guarantee against the Bank as a principal debtor, in the first instance, without proceeding against the CONTRACTOR and notwithstanding any security or other guarantee that the EMPLOYER may have in relation to the CONTRACTOR's liabilities.

The Bank further agrees that the Guarantee herein contained shall remain in full force during the period that is taken for the performance of the CONTRACT and it shall continue to be enforceable till all the dues of the Commission under or by virtue of this CONTRACT have been fully paid and its claim satisfied or discharged or till the EMPLOYER discharges the guarantee in writing. We further agree that as between us and the EMPLOYER for the purpose of this Guarantee any notice for a breach of Agreement by the CONTRACTOR given to us by the EMPLOYER and any amount claimed in such notice by the EMPLOYER shall be conclusive and binding on us notwithstanding any difference between the EMPLOYER and the CONTRACTOR or any dispute pending before any Court, Tribunal, Arbitrator or any other authority. We further agree that this guarantee shall not be affected by any change in our Constitution or that of the CONTRACTOR. We also undertake not to revoke this Guarantee during its currency. Notwithstanding anything continued hereinabove, our liability under this guarantee is limited to Work advance equivalent to 5.5% of the contract value i.e. Rs() in aggregate and it shall remain in full force upto and including 60 days after contract period unless extended further, from time to time for such period as may be instructed in writing by M/s..... on whose behalf this Guarantee has been given in which case it shall remain in full force upto and including 60 days after the extended date. Any claim under this Guarantee must be received by us before the expiry of the 60 days from the extended date, if any, and if no such claim has been received by us within sixty days after the said date/extended date, EMPLOYER's right under this Guarantee will cease. However, if such a claim has been received by us within and upto sixty days after the said date/extended date, all the EMPLOYER's rights under this Guarantee shall be valid and shall not cease until we have satisfied that claim.

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

WITNESS:

_____ Signature:

(Signature)

_____ Name:

(Name)

_____ Designation with Bank Stamp:

(Official Address)

Attorney as per Power of Attorney No.

Date _____

FORM-E:

**PROFORMA OF IRREVOCABLE BANK GUARANTEE FOR
PERFORMANCE OF FENDERS & BOLLARDS**

(To be submitted on Non-judicial Stamp Paper of appropriate value)

Ref: Bank Guarantee No _____

Date _____

To

Cochin Port Trust

Willingdon Island,

Kochi 682009.

Dear Sirs,

In consideration of Board of Trustees of Port of Cochin (hereinafter referred to as the 'Port Trust' which expression unless repugnant to the context or meaning thereof includes its successors, administrators and assigns) having awarded to M/s _____ with its Registered / Head Office at _____ (hereinafter referred to as the "CONTRACTOR" which expression shall unless repugnant to the context or meaning thereof, include its successor, administrators, executors and assigns), a "CONTRACT" by issue of Port Trust's work order dated _____ the same having been unequivocally accepted by the Contractor resulting in a "CONTRACT" bearing No. _____ dated _____ value _____ at _____ for _____ and the CONTRACTOR having agreed to provide a Contract Performance Guarantee for the faithful performance of the entire Contract equivalent to _____, to Port Trust under the terms and conditions of an agreement between Board of Trustees of Port of Cochin and For the execution of the work (hereinafter called "the said agreement") .

2. We _____ having its Head office at _____ (hereinafter referred to as the "Bank", which expression shall unless repugnant to the context or meaning thereof, include its successors, administrators, executors and assigns) do hereby guarantee and undertake to pay the Port Trust on demand any and all money payable by the Contractor to the extent of _____ as aforesaid at any time upto _____ without any demur, reservation, contest, recourse or protest and/or without any reference to the CONTRACTOR. Any such demand made by the Port Trust on the Bank shall be conclusive and binding notwithstanding any difference between Port Trust and CONTRACTOR.

3. We, _____ Bank Ltd., do hereby undertake to pay to the Port Trust any money without demur so demanded notwithstanding any dispute or disputes raised by the contractor(s) in any suit or proceeding pending before any court or Tribunal relating thereto, our liability under this present being absolute and unequivocal. The payment so made by us under this bond shall be a valid discharge of our liability for payment there under and the contractor(s) shall have no claim against us for making such payment.

4. We, _____ Bank Ltd., further agree that the guarantee herein contained shall remain in full force and effect during the period that would be taken for the performance of the said Agreement and that it shall continue to be enforceable till all the dues of the Port Trust under or by virtue of the said Agreement have been fully paid and its claim satisfied or discharged or till Engineer-in-charge on behalf of the Port Trust certifies that the terms and conditions of the said Agreement have been fully and properly carried out by the said contractor(s) and accordingly discharges this guarantee.

5. We, _____ Bank Ltd., further agrees with the Port Trust that the Port Trust shall have the fullest liberty without our consent and without affecting in any manner our obligations hereunder to vary any of the terms and conditions of the said Agreement or to extend time of performance by the said contractor(s) from time to time or to postpone for any time or from time to time any of the powers exercisable by the Port Trust against the said contractor(s) and to forebear or enforce any of the terms and conditions relating to the said Agreement and we shall not be relieved from our liability by reason of any such variation, or extension being granted to the said contractor(s) or by any such matter or things whatsoever which under the law relating to sureties would but for this provision, have effect of so relieving us.

6. This guarantee will not be discharged due to the change in the constitution of the Bank or the contractor(s).

7. We, _____ Bank Ltd., lastly undertake not to revoke this guarantee except with the previous consent of the Port Trust in writing and further agrees that the guarantee herein contained shall continue to be in endorseable till the Port Trust discharges its guarantee.

8. We, _____ Bank Ltd. also agrees that Port Trust at its option shall be entitled to enforce this Guarantee against the Bank as principal debtor, in the first instance without proceeding against CONTRACTOR and notwithstanding any security or other guarantee that Port Trust may have in relation to the CONTRACTOR's liabilities.

9. This guarantee shall be valid upto _____ unless extended on demand by Port Trust. Notwithstanding anything mentioned above, our liability against this guarantee is restricted to Rs _____ (Rupees _____ only) and unless a claim in writing is lodged with us within six months of the date of expiry of or the extended date of expiry of this guarantee all our liabilities under this guarantee shall stand discharged.

Dated the _____ day of _____ 20 .

WITNESSES

(Signature)

(Name)

(Signature)

(Name)

Bank's Rubber Stamp

(Name)

(Name)

(Official address)

(Designation with Bank Stamp)

Attorney as per Power of Attorney

No. _____

Dated _____