

GENERAL CONDITIONS OF CONTRACT

CHENNAI PETROLEUM CORPORATION LIMITED

(A group company of IndianOil)

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SECTION 1

DEFINITION OF TERMS

Unless the context otherwise requires, the defined terms set out below have the following meaning.

1. **“Bid” or “Tender”** shall mean and include the complete offer document submitted by the Bidder / Tenderer in response to the Notice Inviting Tender which has been deposited with/submitted to the Owner within the stipulated date and time.
2. **“Bidder” or “Tenderer”** shall mean that individual or entity who has been issued with or who has purchased the Bid Document pursuant to the Owner’s Notice Inviting Tender/ Letter Inviting Tender.
3. **“Change Order”** shall mean the order given in writing by the Engineer-in-charge to effect additions to or deletions from and alterations in the Work.
4. **“Completion Certificate”** shall mean the certificate issued in terms of Clause 8.4.3.
5. **“Contract”** shall mean the Agreement between the Owner and the Contractor for the execution of the Work.
6. **“Contract Document”** shall mean collectively the Tender Documents, designs, drawings, specifications, Schedule of Rates, Letter of Acceptance of Tender, statement of agreed variations, if any, and such other documents as may be mentioned in the Contract or included subsequently.
7. **“Contractor”** shall mean such Bidder or Tenderer whose offer has been accepted and to whom a Letter of Acceptance has been issued in pursuance thereto.
8. **“Contract Value”** in relation to the Work shall mean the total consideration required under the Contract to be paid by the Owner to the Contractor on satisfactory execution of the Work.
9. **“Consultant”** shall mean the consultant nominated/appointed by the Owner for the project/ job.
10. **“Defect Liability Period”** shall mean the period reckoned in terms of Clause 8.5.
11. **“Drawings”** shall include maps, plans, sketches and tracings or prints thereof as also any modifications thereto approved in writing by the Owner, and/or Engineer-in-charge, notifying addition to or deletion with respect to the Work.

12. **“Engineer-in-Charge”** shall mean the officer designated as such by the Owner and shall include any other person expressly authorized in writing by the Owner, for any specific purpose, as the Engineer-in-charge.
13. **“Final Test Certificate”** shall mean the certificate issued in terms of Clause 8.3.2.
14. **“Letter of Acceptance”** shall mean the letter of acceptance issued by the Owner to the Bidder/Tenderer whose offer has been accepted.
15. **“Managing Director”** shall mean the person discharging the duties of the Managing Director of the Owner.
16. **“Owner”** shall mean the Chennai Petroleum Corporation Limited, incorporated in India, having its Registered Office at 536, Anna Salai, Teynampet, Chennai– 600018, Tamil Nadu, India.
17. **“Permanent Work”** shall mean and include work which will be incorporated in and form a part of work to be handed over to the Owner by the contractor on completion of the contract.
18. **“Progress Schedule”** shall mean the progress schedule as approved in terms of Clause 7.4.2 or as issued by the Engineer-in-charge in terms of Clause 7.4.3.
19. **“Site”** shall mean and include the area at or on which the Work or any part of the Work is to be required to be executed or carried out, and shall include such other place(s) as may be made available by the Owner for purposes of executing the contract.
20. **“Sub-Contractor”** shall mean any person or entity designated as the Sub-contractor by the Contractor in accordance with the terms of the GCC.
21. **“Temporary Work”** shall mean all temporary work of every kind required in or about the execution, completion or maintenance of the Work.
22. **“Termination Notice”** shall mean the written notice issued by the Owner to the Contractor in terms of Clause 11.1.1.
23. **“Work”** shall mean and include all works, of whatsoever character, set forth or specified, or implied therefrom, or incidental thereto or as may be subsequently specified in the Contract, including but not limited to drawings, supplies, construction, erection, etc, as per the Contract.

SECTION 2

INSTRUCTIONS TO BIDDERS

2.1 Tender Documents:

The Tender Documents shall consist of the following:

- i) Notice Inviting Tender / Letter Inviting Tender
- ii) Instructions to Bidders (ITB)
- iii) General Conditions of Contract (GCC)
- iv) Special Conditions of Contract (SCC)
- v) Standards and Specifications
- vi) Drawings
- vii) Time Schedule
- viii) Schedule of Rates
- ix) Addendum / Addenda to Tender Documents

2.2 Tenderer to obtain his own information:

2.2.1 The Tenderer shall be deemed to have obtained or be otherwise in possession of all the necessary information for the purpose of preparing his Tender, including the Schedule of Rates.

2.2.2 The Tenderer shall be deemed to have examined the Tender Documents, to have generally obtained information in all matters whatsoever that might affect the carrying out of the Work at the Scheduled Rate and to have satisfied himself as to the correctness of his Tender. Any errors in description of quantity or omission therefrom shall not vitiate the Contract that may be entered into or release the Contractor from executing the Work comprised in the Contract according to Drawings, Specifications at the Scheduled Rates. The Tenderer is deemed to have known the scope, nature and magnitude of the work and the requirements of Materials and Labour involved, etc., and as to what all Work he has to complete in accordance with the Contract notwithstanding any omissions or errors in the Tender Documents.

2.2.3 The Tenderer shall be deemed to have visited and examined the site and its surroundings, to have satisfied himself as to the nature of all existing structures if any, and also as to the nature and condition of existing railways, roads, bridges and culverts, means of transport or communication, whether by land, water or air and as to possible interruptions thereto and the access to and egress from the site, to have made necessary

inquiries, examined and satisfied himself as to the sites for obtaining sand, stone, bricks and other materials, the sites for disposal of surplus materials, the available accommodation as to whatever required, Depots and such other building as may be necessary for executing and completing the works, to have made local and independent inquiries as to the subsoil, subsoil water and the variation thereof, storm, prevailing winds, climatic conditions and generally all matters affecting these works.

2.2.4 The Tenderer is deemed to have acquainted himself as to his liability for payment of Government Taxes and Duties and other charges.

2.2.5 Any neglect or failure on the part of the Contractor in obtaining necessary and reliable information upon the foregoing or any other matters affecting the Contract shall not relieve him from any risks, or liability or from the entire responsibility for completion of the Work at the Scheduled Rates and within the stipulated time, in accordance with the Contract Documents.

2.2.6 No verbal agreement or inferences from conversation with any officer or employee of the Owner, howsoever occurring and at any time, shall affect or modify any of the terms or obligations contained in the Contract agreement.

2.3 Submission of Tenders:

2.3.1 Tender Documents shall remain the property of the Owner and shall not be used, without the express written consent of the Owner, by any one other than the intending Tenderer who has purchased or otherwise lawfully obtained the same.

2.3.2 Two sets of tender documents, one set marked "ORIGINAL" and the other marked "TENDERER'S COPY", shall only be issued to any one intending Tenderer.

2.3.3 The "ORIGINAL" tender document shall be completely filled in all respects and shall be submitted along with requisite information and Annexures. A Tender, incomplete in any respect, shall be liable for rejection without further reference to the Tenderer. All information, correspondence, letters and details accompanying the Tender Documents and all further correspondence in connection with the Tender shall be submitted in FIVE copies.

2.3.4 The Tender with a complete set of Tender Documents shall be submitted as prescribed below:

2.3.4.1 The Unpriced part of the Tender kept in a sealed envelope superscribed "UNPRICED PART - TENDER for [Name of Work], TENDER NOTICE No....." .

This part shall also contain the Earnest Money Deposit. [“First Cover”]

- 2.3.4.2 The Priced part of the Tender kept in a sealed envelope superscribed “PRICED PART - TENDER for [Name of Work], TENDER NOTICE No.....”. [“Second Cover”]
- 2.3.4.3 The First Cover and the Second Cover shall be enclosed in a sealed cover superscribed prominently with the note “TENDER for [Name of Work], TENDER NOTICE No....., DO NOT OPEN BEFORE” [“Third Cover”].
- 2.3.4.4 All the three sealed envelopes shall bear the full name, postal address, telephone / fax number of the Tenderer at the bottom left hand corner.
- 2.3.5 The Tenderers are advised to submit the Tenders, personally or through an authorised agent, at the place of submission of Tender mentioned in Notice / Letter Inviting Tender. Alternatively, the Tenderers may send the Tender by registered post to the tender receiving authority specified in the Notice / Letter Inviting Tender. However, the Owner does not accept responsibility for postal delay or loss in transit.
- 2.3.6 The sealed Tender in the Third Cover must reach the stipulated address before the closing time for submission of Tenders specified in the Notice / Letter Inviting Tender. Tenders received after the closing time for submission of Tenders shall be considered as “Late Offers” and are liable for rejection.
- 2.3.7 Tender, as submitted shall be the property of the Owner and it shall not be returned to the Tenderer on any account. However, “Late Offers”, if requested by the Bidders shall be returned to them.

2.4 Tender Documents:

The Tenders, as submitted, shall include the following:

- 2.4.1 Complete set of Tender Documents marked “ORIGINAL” as issued, duly filled in and signed by the Tenderer in the manner prescribed in the Tender Documents.
- 2.4.2 Earnest Money as specified in Clause 2.12 hereof.
- 2.4.3 Power of Attorney or a true copy thereof duly attested by a Gazetted Officer in case an authorised representative has signed the Tender, as stipulated in Clause 2.7 hereof.

- 2.4.4 Income Tax clearance certificate and Sales Tax clearance certificate in original or true copies duly attested by a Government Gazetted Officer.
- 2.4.5 'Letter of Submission of Tender' as per Proforma enclosed in **Appendix – I**
- 2.4.6 Information regarding Tenderer in the Proforma enclosed as **Appendix – II.**
- 2.4.7 Copy of the partnership deed in case the Bidder is a Partnership firm and Memorandum/ Articles of Association in case of Companies.
- 2.4.8 Details of work of comparable nature and magnitude carried out by the Tenderer in the proforma enclosed as **Appendix – III.** The Tenderer should enclose documents to show that he has previous experience in having successfully completed in the recent past, works of the nature and value as stipulated in the pre-qualification requirements, together with the names of owners, location of sites and value of contract.
- 2.4.9 Organisation Chart giving details of the proposed field management at site, including bio-data of the Site-in-charge and the key personnel.
- 2.4.10 Details of construction plant and equipment available with the Tenderer for use in the execution of the work, in the proforma enclosed under the head "Information Regarding Equipment which the Tenderer proposes to use for his work", as **Appendix – IV.**
- 2.4.11 Tenderer's Safety Policy.
- 2.4.12 Tenderer's Quality Policy.
- 2.4.13 Solvency certificate from a Scheduled bank indicating the amount to which the Tenderer is solvent to prove the financial ability to carry out the work tendered for.
- 2.4.14 Details of concurrent commitments of Tenderer as per proforma enclosed as **Appendix – V.**
- 2.4.15 Copies of documents showing annual turnover of the Tenderer.
- 2.4.16 Audited Profit and Loss Account and Balance Sheets for the preceding three years.
- 2.4.17 Exceptions and deviations, if any, with reference to the Section No., Clause No. and Page No. of the Tender Document.

2.4.18 Any other technical information, relevant to the work which the Tenderer wishes to furnish.

2.5 Addenda:

2.5.1 Addenda to the Tender Documents may be issued prior to the date of opening of the Tenders to remove omissions /ambiguities, if any, or to clarify the specifications, or to intimate modifications in the design or contract terms.

2.5.2 Each addendum will be distributed in duplicate to each person or Organisation to whom a set of Tender Documents has been issued. Each recipient will retain one signed copy of each addendum for submission along with his Tender and return one signed copy to the authority inviting Tenders as acknowledgement of receipt of the addendum. All such addenda issued by the Owner shall become part of Tender Documents.

2.6 Filling up of Tender:

2.6.1 Tenderers are deemed to have read and fully understood all terms and conditions of the Tender.

2.6.2 Tenderers shall submit the quotation as per additional details given in other clauses given here under. The requisite details shall be filled in by the Tenderer in the Letter of Submission of Tender.

2.6.3 Addenda /Corrigenda to the Tender Document, if issued, must be signed and submitted along with the Tender Document. The Tenderer should write clearly the revised quantities in the Schedule of Rates of Tender Document and should price the work based on revised quantities, if amendments for quantities have been issued.

2.6.4 Tenderers are advised to submit quotation strictly based on the terms and conditions and specifications contained in the Tender Document and not stipulate any deviations. Should it however become unavoidable, deviations should be stipulated with reference to the clause and page number of Tender Document. Owner reserves the right to reject such Tenders or to evaluate quotations containing deviations having financial implications after loading appropriate cost for such deviations as determined by the Owner.

2.7 Signing of Tender:

2.7.1 The Tender shall contain the name, residence and place of business of person or persons making the Tender and shall be signed by the Tenderer with his usual signature.

Partnership firms shall furnish the full names of all partners in the Tender. It should be signed in the partnership's name by all the partners or by duly authorised representative followed by the name and designation of the person signing. Tender by Corporation shall be signed in the name of Corporation, by a person duly authorised to do so. In case it is signed by an authorised representative, a Power of Attorney in that behalf shall accompany the Tender. A copy of the constitution of the firm with names of all partners shall be furnished.

- 2.7.2 The person signing the Tender shall state his capacity as also the source of his power to bind the Tenderer. The power of attorney or authorisation or other document constituting adequate proof of the capacity and competence of the signatory to bind the Tenderer shall be annexed to the Tender. The Owner reserves the right to reject any Tender unsupported by adequate proof of the signatory's authority.
- 2.7.3 All pages of all sections of Tender Document shall bear, at the lower right hand corner, the initials of the Tenderer or of a person holding Power of Attorney authorising him to sign on behalf of the Tenderer unless such page is required to bear the full signature. All signatures in Tender Documents shall be dated as well.
- 2.7.4 When a Tenderer signs a Tender in a language other than English, the total amount in the Schedule of Rates should in addition be written in the same language. The signature should be attested by at least one witness.
- 2.7.5 Witnesses and sureties shall be persons of status and their names, occupation and address shall be stated below their signatures.

2.8 Rates to be in Figures and Words:

- 2.8.1 The Tenderer should quote in English, both in figures as well as in words, the rates and amounts tendered by him in the Schedule of Rates, in such manner that interpolation is not possible. If the rate is not quoted both in figures and words properly and correctly, the Tender shall be liable for rejection. The amount for each item should be entered, together with working details where called for, and requisite totals given of all items, both in figures and in words. The tendered amount for the work shall be entered in the Tender and duly signed by the Tenderer.
- 2.8.2 If discrepancies are found between the rates given in words and figures of the amount shown in the Tender, the following procedure shall be followed :
- a) When there is a difference between the rates in figures and words, the rate which corresponds to the working details furnished by the Tenderer shall be taken as correct rate.

- b) When the rate quoted by the Tenderer in figures and words tally but amount is incorrect, the rate quoted by the Tenderer shall be taken as correct and the amount shall be determined accordingly.
- c) When it is not possible to ascertain the correct rate as prescribed above, then the rate in words shall be treated as quoted rate.

2.8.3 The rates stated in the Schedule of Rates shall not be subject to escalation on any account whatsoever.

2.9 Corrections and Alterations :

No erasures or over writings are permissible. In case corrections /alterations in the entries of Tender documents become unavoidable, they should be authenticated with full signature of the Tenderer with date. Tenders with blanks, or dashes are liable to be rejected. The expressions 'nil', or 'not applicable' may be used wherever necessary.

2.10 Unquoted Items:

The Tenderer shall fill in rates for all items of the Work as detailed in the Schedule of Rates. Tenderer will not be entitled to be paid anything by the Owner in respect of items for which no rate is entered and the cost /price in respect of such items shall be deemed to be included in the other items in the Schedule of Rates.

Owner reserves the right to reject Tenders in which rate(s) are not quoted by the Tenderer for one or more items.

2.11 Currencies:

The rates and the amounts shall be quoted by the Bidder entirely in Indian Rupees unless otherwise permitted.

2.12 Earnest Money :

2.12.1 The Tenderer must deposit in full the Earnest Money indicated in the Notice Inviting Tender / Letter Inviting Tender along with the Tender, and in the manner indicated herein, failing which the Tender will be considered incomplete.

2.12.2 The Earnest Money can be deposited in the form of Demand Drafts or Bank Guarantee.

- 2.12.3 The Demand Drafts or Bank Guarantee shall be one issued by any Scheduled Bank in India in favour of the Chennai Petroleum Corporation Limited, Manali, Chennai. The bank guarantees submitted by the Tenderer shall be in the proforma enclosed as **Appendix – VI** and shall be valid, initially, for a period of six (6) months from the notified date of opening of the tender.
- 2.12.4 No interest shall be allowed on the Earnest Money deposited by the Tenderer.
- 2.12.5 Earnest Money of the unsuccessful Tenderer will be refunded within a reasonable period of time after award of the contract.
- 2.12.6 The Earnest Money deposited by successful Tenderer shall be liable for forfeiture if such Tenderer fails to deposit the requisite Initial Security Deposit as per Section 4 hereof, and /or fails to start work within a period of Ten (10) days, or fails to execute the contract agreement within ten (10) days of receipt of intimation of acceptance of the Tender by the Owner. The Earnest Money deposited by the successful Tenderer shall be returned to him only after he deposits the requisite Initial Security Deposit as per Section 4 hereof.

2.13 Time for Completion:

- 2.13.1 The time for completion of the Work is shown in the Time Schedule forming part of the Tender Document. Time shall be reckoned from the date of receipt by the successful Tenderer of Fax /Letter of Acceptance of the Tender by the Owner. The successful Tenderer shall commence work at job site within ten (10) days of the date of receipt of the Fax /Letter of Acceptance.
- 2.13.2 The Time Schedule shall be signed and submitted along with the Tender. Requests for revision of Time Schedule after the Tenders have been opened will not be considered.

2.14 PF / ESI Code:

The Tenderer shall indicate his / their PF Code / ESI Number in their tender, failing which the Tender submitted by him / them shall be liable for rejection.

2.15 Income Tax Permanent Account Number :

The Tenderer shall in all cases indicate his income tax Permanent Account Number.

2.16 Safety Policy:

The Tenderer shall submit copies of their safety policy, procedures, accident performance details, together with illustrative risk assessments and method statements for similar work undertaken previously.

2.17 Quality Policy:

The Tenderer shall submit copies of their quality policy, procedures, and performance details, together with certifications obtained by them in this regard.

2.18 Tender Validity:

Tender submitted by Tenderer shall remain valid for acceptance, initially, for a period of four months from the date of opening of the Tender. At the request of the Owner, the Tenderer may extend the validity period of the Tender. The Tenderer shall not, during the said period of four months or the extended period, without the prior consent in writing of the Owner, revoke, or cancel the Tender or vary the terms of the Tender. In case of Tenderer revoking or canceling his Tender or varying any term in regard thereof without the consent of Owner in writing, the Earnest Money paid along with Tender, by Tenderer, shall be forfeited.

2.19 Retired Government or Company Officers :

2.19.1 No Director of the Owner is allowed to Tender for a period of two years after his retirement or resignation from the office of Director, without the previous permission of the Owner. The contract, if awarded in violation of this stipulation, is liable to be cancelled if the Tenderer is found at any time to be such a person and has not obtained the permission of the Owner before submission of the Tender. Any Tender by a person aforesaid shall carry a disclosure thereof in the Tender and shall be accompanied by a copy of the document by which the requisite consent is given. Such disqualification shall apply to every partner of a partnership firm.

2.19.2 The Tenderer is required to expressly state whether he is a relative of any Director of the Owner or the Tenderer is a firm in which a Director of the Owner or his relative is a partner, or Tenderer is a company in which a Director of the Owner is a Director. For the purposes of this Clause the term 'relative' shall have the same meaning as in Section 6 of the Companies Act, 1956.

2.19.3 No engineer of gazetted rank or other gazetted officer, employed in engineering or administrative duties in an Engineering Department of the State / Central Government or of the Owner is allowed to work as or under a Contractor for a period of two years after ceasing to be in such service, without the previous written permission of the Owner. In the absence of such permission, a Contract if awarded is liable to be cancelled.

2.20 Banned or De-listed Contractors :

The Tenderer shall give a declaration in the enclosed proforma (**Appendix II A**) that it / they have or had not been banned, or blacklisted / de-listed by any Government / Quasi-Government / Public Sector Undertaking. If such declaration is not given together with the Offer, their bid will be rejected as incomplete. If a Tenderer has been so banned, or blacklisted / de-listed, the OWNER reserves the right to disqualify such Tenderer. A person, firm or company banned, or blacklisted / de-listed by the Owner shall not be eligible to receive the Tender Documents or to submit a Tender for so long as the order banning / blacklisting / de-listing is in force. If it is found at a later date that the Contractor has secured the contract by furnishing wrong information or by suppressing facts in the bid submitted, the owner reserves the right to cancel the contract and forfeit the EMD.

2.21 Right of Owner to Accept or Reject Tender :

2.21.1 The acceptance of Tender will rest with the Owner. The Owner, however, does not bind itself to accept the lowest Tender and reserves to itself the authority to reject any or all Tender received without assigning any reason whatsoever.

2.21.2 The whole Work may be split up between two or more Contractors, or accepted in part and not in entirety, if considered expedient.

2.21.3 Tenders in which any of the particulars and prescribed information are missing or are incomplete in any respect, and / or the prescribed conditions are not fulfilled, are liable to be rejected.

2.21.4 Canvassing in connection with tenders is strictly prohibited. Tender submitted by a Tenderer who resorts to canvassing in any form is liable to rejection, apart from other legal proceedings that may be instituted against the concerned Tenderer.

- 2.21.5 Tenders containing uncalled for remarks or any additional conditions are liable to be rejected.
- 2.21.6 In case unsolicited reductions in rate(s) or price(s) are offered by a Tenderer after opening of the priced bids, the respective Tender shall be liable to be rejected.
- 2.21.7 Acceptance of a Tender shall be intimated by a Letter of Acceptance by the Owner to the Tenderer at the address furnished for the purpose in the Tender.

2.22 Signing of the Contract :

The successful Tenderer shall be required to execute an agreement in the form attached as **Appendix – VII**, within 10 days from date of receipt of the Fax / Letter of Acceptance of the Tender or within such extended time as may be permitted by the Owner in this regard. In the event of failure on the part of the successful Tenderer to execute the agreement within the stipulated period, the Earnest Money deposited and the Initial Security Deposit will be forfeited and the acceptance of the tender, shall stand cancelled. This is subject to cure period under Clause 11.1.1

SECTION 3

INTERPRETATION OF CONTRACT DOCUMENTS

3.1 Interpretation of Contract Documents:

- 3.1.1 The Contract Documents are to be read together. Should there be any discrepancy, inconsistency, error or omission in the Contract or in any of the Contract Documents, the matter shall be referred to the Engineer-in-Charge, whose decision shall be final and conclusive and the Contractor shall carry out the Work in accordance with such decisions.
- 3.1.2 Works shown upon the drawings but not mentioned in the specifications, or described in the specification without being shown on the drawings, shall nevertheless be held to be included in the same manner as if they had been specifically shown upon the drawings and described in the specifications.
- 3.1.3 All headings of and marginal notes to the clauses of these General Conditions of Contract or to the Specifications or to any other part of the Tender Document are solely for the purpose of giving a concise indication and not a summary of the contents thereof, and shall not be deemed to be part thereof or be used in the interpretation of construction thereof of the Contract.
- 3.1.4 In the Tender / Contract Documents, unless otherwise stated specifically, the singular shall include the plural and vice versa wherever the context so requires. Words importing persons shall include relevant incorporated companies / registered associations / body of individuals / firm of partnership.

3.2 Special Conditions of Contract :

- 3.2.1 The Special Conditions of Contract shall be read in conjunction with the General Conditions of Contract, Specifications of Work, Drawings and any other documents forming part of this Contract wherever the context so requires.
- 3.2.2 Notwithstanding the sub-division of the Contract Documents into separate sections and volumes, every part of each shall be deemed to be supplementary to and complementary of every other part and shall be read with and into the Contract so far it may be practicable to do so.
- 3.2.3 Where any portion of the General Conditions of the Contract is repugnant to or at variance with any other provisions of the Special Conditions of the Contract, then unless a different intention appears, the provisions of the Special Conditions of the Contract shall be deemed to over-ride the provisions of the General Conditions of Contract and shall prevail to the extent of such repugnancy or variations.

- 3.2.4 Wherever it is mentioned in the Specifications that the Contractor shall perform certain Work or provide certain facilities, it is understood that the Contractor shall do so at no extra cost.
- 3.2.5 The materials, designs and workmanship shall satisfy the relevant Standards, Specifications contained herein and Codes referred to. Where the Specifications stipulate requirements in addition to those contained in the Standards or Codes, such additional requirements shall also be satisfied.

3.3 Order of Precedence of Documents :

- 3.3.1 The Contract Documents shall be interpreted in the following order of precedence, that is to say, in the event of any inconsistency, the document later in precedence shall stand modified / abrogated by the document(s) higher in precedence.
- i) Fax of Acceptance / Letter of Acceptance along with Schedule of Rates and Statement of Agreed Variations and its enclosures
 - ii) Special Conditions of Contract
 - iii) General Conditions of Contract
 - iv) Relevant Standards / Technical Specifications
 - v) Drawings
 - vi) Any other documents listed as forming part of the Contract Documents.

SECTION - 4

SECURITY DEPOSIT

4.1 Amount of Security Deposit :

The Contractor is required to deposit with the Owner in the specified manner, a Security Deposit which shall be equivalent to 10(ten) per cent of the Contract Value. The Security Deposit shall be held by the Owner as security for the due performance of the Contractor's obligations under the Contract. ["Contract Performance Guarantee" or "CPG"]. No interest shall be payable by the Owner for the Security Deposit.

4.2 Mode of Security Deposit :

4.2.1 The Security Deposit shall be made in any of the following forms within 10 (ten) days of receipt by the Contractor of the notification of acceptance of the Tender:

- (a) By a Demand Draft for the full Value; or
- (b) By a Demand Draft for 2½ % (two and a half per cent) of the Contract Value or by a Bank Guarantee for 2½ % (two and a half per cent) of the Contract Value as per proforma in **Appendix VIII**; or
- (c) By a Bank Guarantee for the full value from a Scheduled Bank as per proforma in **Appendix IX**.

4.2.2 In case of Clause 4.2.1 (b) above, the balance Security Deposit shall be made by adjustment recovery from the first running bill onwards @ 10% of each such bill, till the full value of the Security Deposit is made up. The Demand Draft shall be drawn in favour of "Chennai Petroleum Corporation Limited", payable at Chennai.

4.2.3 The BG shall be from a Scheduled Commercial Bank located in India. BGs issued by a Foreign Bank shall be counter-guaranteed by their branch in India or a scheduled commercial bank. The BG in all cases shall be valid upto a date three months beyond the expiry of the Defect Liability period.

4.2.4 If the total value of the Security Deposit becomes deficient at any time, the Contractor shall make up the deficiency within ten days of such occurrence, by furnishing a BG for the deficient amount, failing which, the Owner shall be entitled to make up the deficiency by adjustment recovery from the Running Bills.

4.3 Shortfall / Excess in Security Deposit :

If the value of Work as per actual execution exceeds the Contract Value as stated in the Letter of Acceptance, further recoveries towards Security Deposit shall be effected at 10(ten) per cent of the value of each running account bill till the deficiency in the Security Deposit is made good. Similarly, if the value as per actual execution is less than the Contract Value, recovery towards Security Deposit, effected in the running bills, in excess of 10 (ten) per cent of the value of work as per actual execution shall be refunded to the Contractor along with final bill.

4.4 Right of Owner to enforce Bank Guarantee in case of destruction of property by Contractor :

If the Contractor, or Sub-contractor, including their agents and employees shall, howsoever, cause any loss or damage to the property of the Owner during the execution of the Contract, such loss or damage shall be made good by the Contractor promptly at his own expense and in default thereof, the Engineer-in-Charge may cause the same to be made good by other agencies at the risk and expense of the Contractor (for which the certificate of the Engineer-in-Charge shall be final). In such a case, Owner shall be at liberty to recover any dues in this regard from the Contractor by invoking the Contract Performance Bank Guarantee, without recourse or notice to the Contractor.

4.5 Right of Owner to adjust Security Deposit for any dues :

The Owner shall be entitled to recover from the Security Deposit, by adjustment or by invoking the Bank Guarantee or partly by one and partly by another, any sums that may become due to the Owner from the Contractor on account of or in terms of this Contract, and in such cases the Contractor shall make up the Security deposit in terms of Cl.4.2.4.

4.6 Refund / Forfeiture of Security Deposit :

4.6.1 The Security Deposit shall be held by the Owner as security for the due performance of the Contractor's obligations under the Contract, provided that nothing herein stated shall make it incumbent upon the Owner to utilize the Security Deposit in preference to any other remedy which the Owner may have, nor shall it be construed as if the claims of the Owner against the Contractor are limited to the value of the Security Deposit.

4.6.2 Upon termination of the Contract, howsoever caused, prior to completion of the Contract, the Owner shall refund to the Contractor, the un-utilised part of the Security Deposit, if any, for the time being remaining in the hands of the Owner, after settlement of accounts including by way of adjustment, with respect to any and all sums due from the Contractor to the Owner.

SECTION – 5

CHANGES IN SCOPE OF WORK / QUANTITIES

5.1 Plans and Drawings to be furnished by Owner :

- 5.1.1 Unless otherwise stated, plans and drawings forming part of the Tender Documents are only indicative of the scope of the Work. Detailed working plans and drawings (if any), required to be furnished by the Owner for the actual execution of the Work, shall be furnished from time to time as and when required, during the progress of Work.
- 5.1.2 It shall be the responsibility of the Contractor to call upon the Owner to furnish such detailed plans and drawings as are required by the Contractor for the proper execution of the Work or any particular item or job therein, sufficiently in advance of the requirement. Delay or failure on the part of the Contractor in this regard shall be entirely at the risk and cost of the Contractor and shall not constitute a ground for the extension of time or escalation of price.
- 5.1.3 The Contractor shall carefully study the detailed plans / drawings supplied to him in conjunction with other connected plans / drawings and other Contract Documents and shall, prior to the execution of the related work(s), bring to the notice of the Engineer-in-charge any difficulties for clarification / correction.
- 5.1.4 The Owner shall be entitled at any time before or during the execution of the related work(s) to amend / modify or alter any plan(s) / drawing(s) furnished to the Contractor by the Owner and the Contractor shall thereafter perform and / or continue to perform the related work(s) according to the plans / drawings so amended / modified / altered, without entitlement to any extra cost or consideration, and should the Contractor thereafter execute such relative work(s) not in accordance with the amended / modified / altered plans / drawings, the provisions of clause 8.2.7 hereof relating to defective works shall apply, provided further that if any such amendment / modification / alteration shall in the opinion of the Contractor, necessitate an extension of time for completion, the provisions of clause 7.4.4 hereof shall apply.
- 5.1.5 Copies of all plans and drawings, including amendments / modifications / alterations, relating to the work(s) shall be kept and maintained at the Contractor's office at the site and shall be made available to the Engineer-in-charge for inspection and for reference at any time during the execution of the work.
- 5.1.6 All plans and drawings, including amendments / modifications / alterations, furnished by the Owner to the Contractor shall be and remain the property of the Owner and shall be returned by the Contractor to the Owner on completion of the work(s) or prior termination of the Contract.

5.2 Plans and Drawings to be furnished by the Contractor :

- 5.2.1 Where the scope of Work requires preparation of any plans / drawings / designs, the Contractor shall, within 15 (Fifteen) days (or such period as the Owner may specify in this behalf) of receipt of notification of acceptance of Tender or within 15 (Fifteen) days before the specified date of commencement of the relative Work, whichever is earlier, submit to the Owner the relative plans / drawings/ designs for approval.
- 5.2.2 The Contractor shall not permit any Work to be done or any material or equipment to be utilised or fabricated or erected at variance with drawings / designs / specifications approved by the Owner as amended / modified / altered.
- 5.2.3 Unless otherwise required, at least 3 (Three) sets of all approved plans / drawings / designs prepared by the Contractor shall be submitted to the Owner for the record of the Owner. Such sets of plans / drawings / designs shall bear the signature of the Contractor as also the reference number and date of the approval granted. Same provisions shall apply with respect to all amendments / modifications / alterations as well.

5.3 Alterations in Designs, Plans, Drawings, Specifications, Orders and Instructions:

- 5.3.1 In addition to the provisions of Clause 5.1, the Engineer-in-charge shall have the power by written notice to the Contractor, at any time prior to or in the course of execution of the Work, to alter or amend the specifications, order and / or instructions or any of them by addition, omission, substitution or otherwise howsoever with and without altering or amending the plans, drawings and / or designs and the Contractor shall carry out the Work of the related work in accordance with such altered specifications, orders, instructions, plans, drawings and / or designs as the case may be, on the same terms and conditions in all respects, subject to provisions of Clause 5.4.3.
- 5.3.2 If such alteration or amendment, in the opinion of the Contractor, necessitates an extension in the time of completion, the provisions of Clause 7.4.4 hereof and related clauses with regard to the extension of time, shall apply.
- 5.3.3 If such alteration or amendment in the opinion of the Engineer-in-charge (whose opinion in this behalf shall be final and binding upon the Contractor) necessitates the performance of any work not covered by the Schedule of Rates ("Additional Work"), the remuneration of such Work or portion of the Work or item thereof not covered by the Schedule of Rates shall be determined in the following manner:

- a) If it is possible to derive the rates for such Additional Work directly from any items in the Schedule of Rates, it shall be so derived. The opinion of the Engineer-in-charge as to whether or not the relative rates could be so derived shall be final and binding upon the Contractor.
- b) In all other cases the rate(s) for the Additional Work shall be determined by aggregating the following :
 - i) cost of all material supplied by Owner at the appropriate applicable issue rate for material supplied by the Owner
 - ii) cost of all material used / supplied by the Contractor and incorporated in the permanent Works, at the applicable rate(s) for such materials, if specified in the relevant Schedule forming part of the Contract
 - iii) Cost of labour at rate(s) for same / comparable labour, if specified in the relevant schedule forming part of the Contract.

Provided that in all cases where rates are not determinable in the manner stated above for any item of material or labour, market rates for such item(s) of materials and / or labour shall be taken into account adding thereto 15% (Fifteen Percent), to cover Contractor's supervision, overheads and profit.

- c) The opinion of the Engineer-in-charge as to whether or not any particular item of material or labour involved is covered by the relevant Schedule(s) shall be final and binding upon the Contractor.
- d) The opinion of the Engineer-in-charge as to the quantity / quality / standard of material and / or labour involved shall be final and binding on the Contractor.

5.3.4 The composite unit rate(s) for any work determined in accordance with the provisions of Clause 5.3.3. above shall for the purpose of Contract be deemed to be included in the Schedule of Rates, with effect from such determination.

5.3.5 The Contractor shall not be entitled to any compensation in addition to the payment for the work actually performed by the Contractor calculated on the basis of the Schedule of Rate(s) or as provided for in Clause 5.3.3 hereof, as the case may be, as a result of any amendment or variation in the specifications, orders, instructions, plans, designs or drawings, even if such alteration(s) or variation(s) has resulted in a reduction of the total quantum or value of the Work involved under the Contract, provided that if as a consequence of such amendment / variation, the Work actually performed by the Contractor and valued on finalisation of all dues to the Contractor under the Contract shall be less than 75% (Seventy Five Percent) of the total Contract Value as specified

for the purpose of Security Deposit in the Letter of Acceptance, then the provisions of Clause 5.6.4 hereof shall apply in respect of the allowance to the Contractor for the advantage (including profit) which the Contractor may have anticipated on execution of the Work upto the total Contract Value specified as aforesaid in the Acceptance of Tender, but in addition thereto, the Contractor shall not be entitled to claim any compensation, damages or profit, whatsoever upon the amendment or variation.

5.4 Alteration in the Scope of Work :

- 5.4.1 The Owner may, at any time before the commencement of the Work, by notice in writing issued to the Contractor, alter the scope of the Work by increasing or reducing the component jobs required to be done by the Contractor, or by adding thereto, or omitting therefrom any specific job or operations or by substituting any existing jobs or operations with other jobs and / or operations, or by requiring the Contractor to perform any extra works in or about the job site, and upon receipt of such notice, the Contractor shall execute the job(s) as required in terms of the altered scope of work.
- 5.4.2 If any alteration in the scope of work shall, in the opinion of the Contractor, necessitate any extension in the time for completion, the provisions of Clause 7.4.4 hereof with regard to the extension of time shall apply.
- 5.4.3 If such alteration in the opinion of the Engineer-in-charge (whose opinion in this behalf shall be final and binding upon the Contractor), necessitate the performance of any work not covered by the Schedule of Rates, the remuneration for such work or portion of item thereof not covered by the Schedule of Rates shall be determined in accordance with the provisions of Clause 5.3.3 hereof.
- 5.4.4 The Contractor shall not be entitled to any compensation in addition to the payment for the work actually performed by the Contractor calculated on the basis of the Schedule of Rate(s) or as provided for in Clause 5.3.3 hereof, as the case may be, as a result of any alteration in the scope of work even if such alteration has resulted in a reduction of the total quantum or value of the Work involved, provided that if as a consequence of such alteration, the Total Contract Value for the completed works on finalisation and settlement of all dues to the Contractor under the Contract shall be less than 75% (Seventy Five Percent) of the Total Contract Value as specified for the purpose of Security Deposit in the Letter of Acceptance, then the provisions of Clause 5.6.4 hereof shall apply in respect of the allowance to the Contractor for the advantage (including profit) which the Contractor may have anticipated on execution of the Work upto the Total Contract Value specified as aforesaid in the Acceptance of Tender, but in addition thereto, the Contractor shall not be entitled to claim any compensation, damages or profit, whatsoever upon the alteration.

5.5 Quantities of Work :

5.5.1 The quantities of work stated in the Form of Schedule of Rates are only indicative and do not form part of the Contract and the Owner assumes no responsibility for the correctness thereof, and the Owner shall not be liable for any increase or decrease in the actual quantities of work effected within the scope of Work, nor shall such increase or decrease, if any, in the actual quantities form the basis of any alteration of rates quoted and accepted, or for any claim for additional compensation, damages or loss of profit or otherwise. Notwithstanding the quantities mentioned in the Schedule of Rates, the Contractor shall be entitled, subject to Clause 5.3 and 5.4 above, to payment only in respect of actual quantities of work performed in terms of the Contract and as per the final measurements, irrespective of any increase or shortfall in the quantities mentioned in the Schedule of Rates and even if the total Contract Value for the completed works on finalisation of all dues to the Contractor under the Contract is less than 75% (Seventy Five Percent) of the total Contract Value as specified for the purpose of Security Deposit in the Letter of Acceptance.

5.5.2 Variation in Quantities: If in the opinion of OWNER, the prices quoted for certain component items of work by the lowest bidder are abnormally high in comparison with the cost estimate and quotation of other bidders, these items will be specifically identified and mentioned in the Letter of Acceptance. In the event of increase in quantity of such items beyond tender quantity, a market rate analysis will be done and the Contractor will be paid either the market rate or the rate quoted by the Contractor whichever is less for the increased quantity.

5.6 Cancellation of Contract / Suspension of Work :

Cancellation of Contract

5.6.1 The Owner shall be entitled, at any time, to cancel / rescind the Contract, if in the opinion of the Owner, the cessation of the work becomes necessary owing to any cause whatsoever, and a notice in writing from the Owner to the Contractor of such cancellation / rescission and the reason(s) therefor shall be conclusive proof of such cancellation / rescission and the reasons thereof.

5.6.2 Upon such cancellation / rescission the Contractor shall be entitled to be paid for the work actually performed by the Contractor on finalisation of all dues and the Owner shall also take over from the Contractor the approved materials lying at job site on the date of such cancellation at the rates for such material(s) as specified in relative item(s) of the Schedule of Rates, and if the rate(s) for any material(s) be not (in the opinion of the Engineer-in-charge shall be final) specified in the Schedule of Rates, then at the

market rate(s) for such material(s) current on the date of the cancellation / rescission. The decision of the Engineer-in-charge as to the approved materials lying at site on the date of cancellation / rescission and the quantities and market rate(s) thereof shall be final and binding upon the Contractor.

- 5.6.3 Notwithstanding that such cancellation / rescission may result in the performance of quantities of work below the quantities indicated in the form of Schedule of Rates and / or of a value below the total Contract Value indicated in the Letter of Acceptance, the Contractor shall not be entitled to any compensation consequent to the cancellation / rescission except to the extent provided in Clause 5.6.4. The contractor shall only be entitled to payment for the work actually performed by the Contractor until cancellation / rescission, calculated on the basis of the Schedule of Rates.
- 5.6.4 If as a consequence of such cancellation, the amount payable for the Contractor's material taken over by the Owner and for the work actually performed by the Contractor on finalisation of all dues under the Contract, in the aggregate be less than 75% (Seventy Five Percent) of the total Contract Value as specified in the Letter of Acceptance for the purpose of Security Deposit, then the Contractor shall be entitled by way of allowance for the advantage (including profit) which the Contractor may have anticipated on execution of the complete work, upto 10% (Ten Percent) of the difference between the aggregate aforesaid and 75% (Seventy Five Percent) of the total Contract Value specified in the Letter of Acceptance, as may be determined by the Owner but in addition thereto the Contractor shall not be entitled to any compensation or expenses or damages or loss of profit whatsoever consequent upon the cancellation.

Suspension of Work :

- 5.6.5 The Engineer-in-charge may at any time(s) at his discretion should he consider that the circumstances so warrant (the decision of the Engineer-in-charge as to the existence of circumstances warranting such suspension shall be final and binding upon the Contractor), by notice in writing to the Contractor temporarily suspend the work or any part thereof for such period(s) as the Engineer-in-charge shall deem fit, and the Contractor shall, upon receipt of the notice of suspension, suspend the work(s) or such part thereof as shall have been suspended, forthwith or from the date / time specified in the said notice. The suspension shall continue until receipt of a written order from the Engineer-in-charge to resume the work suspended.
- 5.6.6 The Contractor shall not be entitled to claim compensation for any loss or damage sustained by the Contractor by virtue of any suspension as aforesaid notwithstanding that consequent upon such suspension the machinery, equipment and labour of the Contractor or any part thereof shall be or become or be rendered idle and notwithstanding that the Contractor shall be liable to pay salary, wages or hire charges or bear other charges and expenses thereof.

- 5.6.7 Except where the suspension is by reason of default or failure on the part of the Contractor (and the reasons for suspension stated by the Engineer-in-charge in any notice of suspension as aforesaid inclusive as to the existence of a default or failure on the part of the Contractor if so stated in the notice shall be final and binding upon the Contractor), in other cases, if in the opinion of the Contractor the suspension of the work or any part thereof in terms of this Clause 5.6 necessitate any extension in the time of completion, the provision of Clause 7.4.4 hereof in respect of extension of time shall apply.
- 5.6.8 In the event of a suspension in terms of this Clause being total affecting the entire works remaining in operation and such suspension continuing for not less than of 4 (four) consecutive months, the Contractor shall have the option to terminate the Contract by giving written notice thereof to the Owner. Unless the suspension be by virtue of default or failure on the part of the Contractor as specified in Clause 5.6.7 hereof, such termination shall be deemed to operate as cancellation of the Contract within provisions of Clause 5.6 hereof and the provisions of Clauses 5.6.2, 5.6.3 and 5.6.4 shall apply relative thereto.
- 5.6.9 Where the Contractor terminates the contract in terms of Clause 5.6.8, the Contractor shall be entitled only to payment for the work done in accordance with the terms of the Contract by application of the Schedule of Rates to the measured quantities and shall not be entitled to any damages, compensation, loss of profit or other payment whatsoever in addition.
- 5.7 Notwithstanding anything provided in Clause 5.6 and upon cancellation of the Contract under the provisions of Clause 5.6.1 hereof, or termination of the Contract under the provisions of Clause 5.6.8 hereof, the provisions of Clauses 11.2.1 to 11.2.5 hereof upon termination of Contract shall apply.

SECTION – 6

MATERIALS AND FACILITIES

6.1 Contractor's responsibility :

6.1.1 The Contractor shall be responsible to provide necessary material, labour, equipment, machinery and facilities and all other items and things whatsoever required for and in connection with the scope of the Work, for the satisfactory performance of the contract.

6.2 Materials to be supplied by the Contractor :

6.2.1 Materials supplied by the Contractor shall conform to the specifications contained in the Contract Documents and shall be suitable for the purpose for which they are required.

6.2.2 Unless otherwise specified by the Owner, all materials supplied by the Contractor shall bear the ISI stamp and / or shall be procured from reputed manufacturers or suppliers listed with the DGS & D. If, in respect of any materials, including but not limited to sand, stone, aggregate, etc., neither ISI marking / approved nor DGS&D listed supplies are available, such materials shall be obtained from source(s) / supplier(s) / manufacturer(s) approved by the Engineer-in-charge; provided that, in no case, shall the Contractor be relieved of his full responsibility in respect of the suitability and quality of the material, or for any defects therein, or for their use in any works or constructions relative to which the same has been utilised.

6.2.3 The Contractor shall, at his expense, analyse, test, prove and weigh all those materials which the Engineer-in-Charge has required in writing to be analysed, tested, proved or weighed, in the manner, at such time and location as is required by the Contract Documents or the Engineer-in-Charge. The Contractor shall provide necessary skilled manpower, materials and things required by the Engineer-in-Charge for testing, for preparation of samples, measuring the work or any part thereof, providing and weighing materials in such manner as the Engineer-in-Charge, shall direct.

6.3 Materials issued by the Owner :

- 6.3.1 Save to the extent expressly provided herein or in the Contract, the Owner has no responsibility to provide any material(s) and / or service(s) with respect to the satisfactory performance of the contract.
- 6.3.2 If the specification of the work provides for the use of materials of special description to be supplied from the Owner's stores, or if it is required that the Contractor shall use only certain stores to be provided by the Engineer-in-Charge, such materials and stores and price to be charged therefor as hereinafter mentioned being so far as practicable for proper and timely performance of the Contract but not so as in any way to control the meaning or effect of this Contract specified in the Schedule hereto annexed, the Contractor shall be bound to purchase and shall be supplied such materials and stores as are from time to time required to be used by him for the purpose of the Contract only.
- 6.3.3 The sums due from the Contractor for the value of materials supplied by the Owner will be recovered from the running account bill on the basis of actual consumption of materials in the work covered and for which the on-account-bill has been prepared. After the completion of works, however, the Contractor has to account for the full quantity of materials supplied to him as per relevant clauses in the contract . The value of stores materials as may be supplied to the Contractor by the Owner will be debited to the Contractor in the account at the rates shown in the Schedule of Materials and if no such rates are shown in the said Schedule, they will be debited at cost price, which for the purpose of the Contract shall include the cost of carriage and all other expenses whatsoever such as normal storage and supervision charges which shall have been incurred in obtaining the same at the owner's stores.
- 6.3.4 All materials so supplied to Contractor shall remain the absolute property of the Owner, and shall not be removed from the site of the work except for and in the course of the performance of the contract. Such material(s) shall be at all times open to inspection by the Engineer-in-Charge, until utilization in the performance of the contract. Any such materials remaining unused at the time of the completion or termination of the Contract, howsoever caused, shall be returned to, the Owner's stores or at such place as is directed by the Engineer-in-Charge, in perfectly good condition.
- 6.3.5 Materials specified in the Contract Documents as 'to be issued' by the Owner will be supplied to the Contractor by the Owner from its stores. It shall be the responsibility of the Contractor to take delivery of the materials and arrange for its loading, transport and unloading at the site of work at his own cost. The materials shall be issued between the working hours and as per rules of the Owner as framed from time to time.

- 6.3.6 The Contractor shall bear all incidental charges for storage and safe custody of materials at site after these have been issued to him.
- 6.3.7 Materials specified in the Contract Documents as 'to be issued' by the Owner shall be issued in standard sizes / lots, as obtained from the manufacturers or the serviceable materials in assorted sizes as follows:
- i) all pipings / tubes and structural of 2 meter and above length
 - ii) all plates of 2 square meter and above
- 6.3.8 The Contractor shall construct suitable godowns at the site of work for storing the materials against damage by rain dampness, fire, theft etc. He shall also employ necessary watch and ward establishment for the purpose.
- 6.3.9 It shall be duty of the Contractor to inspect the materials issued to him at the time of taking delivery and satisfy himself that they are in good condition. After the materials have been delivered by the Owner it shall be the responsibility of the Contractor to keep them in good condition and if the materials are damaged or lost, at any time, they shall be repaired and / or replaced by him at his own cost according to the directions of the Engineer-in-Charge.
- 6.3.10 It shall be the responsibility of the Contractor to arrange in time all materials required for the works other than those to be supplied by the Owner as per schedule of Materials; if, however, in the opinion of the Engineer-in-Charge the execution of the work is likely to be delayed due to the Contractor's inability to make arrangements for supply of materials which normally he has to arrange for, Engineer-in-Charge shall have the right at his own discretion to issue such materials if available with the Owner and the Contractor will be bound to take such materials at the rates decided by the Engineer-in-Charge. This, however, does not in any way absolve the Contractor of responsibility of making arrangements for the supply of such materials in part, or in full, should such a situation occur nor shall this constitute a reason for the delay in the execution of the work.
- 6.3.11 None of the materials supplied to the Contractor will be utilised by the Contractor for manufacturing items which are required to be obtained under the Contract as supplies from standard manufacturer in finished form.
- 6.3.12 The Contractor shall, if decided by the Engineer-in-Charge, be required to execute an indemnity bond in the prescribed form, for safe custody and accounting of all materials issued by the Owner.
- 6.3.13 The Contractor shall furnish to the Engineer-in-Charge sufficiently in advance a statement showing his requirement of the quantities of the materials to be supplied by the Owner

and the time when the same will be required by him for the works, so as to enable the Engineer-in-Charge to verify the quantities of materials and arrange for such materials.

- 6.3.14 A day-to-day account of the materials received from the Owner shall be maintained by the Contractor indicating the daily receipt, consumption and balance in hand. Such account shall be maintained in a manner prescribed by the Engineer-in-Charge along with all connected papers, and it shall be always available for inspection in the Contractor's Office at site.
- 6.3.15 The Contractor should ensure that only the required quantities of materials are demanded for issue by the Owner. The Contractor shall not be entitled to cartage and incidental charges for returning the surplus / unused materials, if any, to the Owner's store wherefrom they were issued or to the place as directed by the Engineer-in-Charge.

6.4 Material procured with assistance of Owner :

Notwithstanding anything contained to the contrary in any or all the clauses of this Contract, where any materials for the execution on the contract are procured with the assistance of the Owner either by issue from Owner's stock or purchases made under orders or permits or licenses issued by Government, the Contractor shall hold the said materials as trustee for the Owner and use such materials economically and solely for the purpose of the Contract and not dispose them of without the prior permission of the Owner. The Contractor shall be liable to return to the Owner, if so required by the Engineer-in-Charge, all surplus or unused materials that may be left with the Contractor on completion of the Contract or at its termination for any reason whatsoever. In such event the Contractor shall be entitled to be paid or credited such price as the Engineer-in-Charge shall determine, for the material(s) so returned, having due regard to the condition of the materials. The price due to the Contractor on this account, however, shall not exceed the amount originally charged to the Contractor excluding storage charges if any. The decision of the Engineer-in-Charge in this regard shall be final and conclusive in such matters.

6.5 Location of site and Accessibility :

- 6.5.1 The Contractor shall, at his expense and as necessary for the proper performance of the Work, construct or secure access roads to the actual site of Work. The Contractor shall be required to permit the use of the roads so constructed by him for use by the vehicles of any other parties, including the Owner, who may be engaged in lawful activity at the Refinery site. The Contractor shall cooperate and not hinder, the construction of

permanent roads, should the construction thereof start while he is engaged on this work. He shall make due allowance in the tender for any inconvenience he may anticipate on such accounts.

6.5.2 Non-availability of access roads and Railway siding for use of / by the Contractor shall in no case be treated as valid justification for any delay in the execution of works or be the cause of any claim for compensation against the Owner.

6.5.3 Entry into the refinery area is restricted. Only pass and permit holders as also vehicles with special permits are permitted within the boundary of the refinery. Inside the premises, access to various job sites is further regulated by permits issued for each area. The Contractor shall be responsible to apply for and secure in time, necessary pass / permits for facilitating entry of their men, materials and vehicles.

6.6 Water Supply :

6.6.1 Water for Construction Purpose : The Owner undertakes to provide water to the Contractor at the Owner's source of supply, free of cost, provided the Contractor arranges to install a water meter, distribution pipe networks from the source of supply and such distribution pipe network shall have the prior approval of the Engineer-in-charge, so as not to interfere with the layout and progress of normal operation and other construction works.

6.6.2 Water for Drinking Purpose : Owner at their discretion may endeavour to provide drinking water to the Contractor at the Owner's source of supply, at one point, free of cost, provided the Contractor makes his own arrangement for the water meter, distribution pipe networks from the source of supply and such distribution pipe network shall have the prior approval of the Engineer-in-charge, so as not to interfere with the layout and progress of normal operation and other construction works. However, the Owner does not guarantee the supply of water and this does not relieve the Contractor of his responsibility in making his own arrangement and for the timely completion of the various works stipulated.

6.7 Power Supply :

The Owner shall provide power connection to the Contractor at the Owner's source of supply, free of cost, provided the Contractor makes his own arrangement for the energy meter and distribution from the source of supply. All the works by the Contractor in this regard will be carried out in accordance with applicable laws and as approved by the

Engineer-in-charge, so as not to interfere with the layout and progress of normal operation and other construction works.

6.8 Land for Contractor's Field Office, Godown and Workshop :

- 6.8.1 The Owner may, subject to availability and other considerations, may permit construction of Contractor's field office, godowns, workshops and assembly yard required for the prompt execution of the Contract in Owner's lands. Such permission shall remain valid only till completion of the work or till termination of the contract howsoever caused, whichever happens earlier. The Contractor shall at his own cost construct all temporary buildings and provide suitable water supply and sanitary arrangement approved by the Engineer-in-charge.
- 6.8.2 All temporary buildings, sheds, etc., shall be constructed in conformation with the safety and security regulations of the Owner as regards location and type of structures.
- 6.8.3 On completion of the Work or prior termination of the contract howsoever caused, whichever is earlier, the Contractor shall remove all structures, temporary works etc., erected / installed by him and restore the site in the original condition or have it cleared as directed by Engineer-in-charge. If the Contractor fails or omits to comply with these requirements, the Engineer-in-charge may at the expense of the Contractor remove, the left-over materials and dispose of the same as he deems fit and get the site cleared as aforesaid and the Contractor shall forthwith pay the amount of all expenses so incurred and shall have no claim in respect of any such left-over material disposed of as aforesaid. But the Owner reserves the right to ask the Contractor any time during the pendency of the Contract to vacate the land by giving 7 days notice on security reasons or in national interest.

6.9 Land for Residential Accommodation :

The Owner shall not be liable or be required to provide land for construction of residential accommodation for staff and / or labour of the Contractor, or to provide living quarters for the Contractor's personnel.

SECTION 7

PERFORMANCE OF WORKS

7.1 General :

- 7.1.1 All works shall be performed and executed by the Contractor in strict conformity with the Contract Documents as applicable to the particular work(s) and any relative instruction as may be issued to the Contractor in this regard by the Engineer-in-Charge from time to time.
- 7.1.2 The Engineer-in-Charge, on his own or on being moved by the Contractor, shall be entitled from time to time or at any time at his discretion to issue written orders or instructions to the Contractor, by way of clarification or amplification of the terms of the Contract, and relative to the performance of the Contract by the Contractor or otherwise relative to any matter touching or affecting the Contract or arising therefrom, and to revise or revoke any orders or instructions previously issued in this regard and such orders and instructions shall be binding on both the parties.
- 7.1.3 If in the opinion of the Contractor, compliance with any order or instruction issued by the Engineer-in-Charge in terms of Clause 7.1.2 would involve violation of any previously issued order or instruction or any terms of the Contract, the Contractor shall forthwith refer the matter in writing to the Engineer-in-Charge and the decision of the Engineer-in-Charge on any such matter shall be final and binding upon the Contractor, who shall thereafter perform the work accordingly without entitlement to any claim against or compensation from the Owner resultant upon such order, instruction or decision, except in terms of the contract.
- 7.1.4 The Contractor shall within 10 (ten) days of receipt of notification of Acceptance of Tender, designate in writing with respect to each job site at which the Contractor shall be awarded any work under the Contract, an engineer by name, responsible for the work at that site on behalf of the Contractor. The engineer of the Contractor so designated shall be treated as the representative of the Contractor at that site for all purposes and with full authority to act on behalf of the Contractor. The designated engineer shall not be changed or replaced except by prior notification in writing to the Engineer-in-Charge. The Engineers / Supervisors appointed by the Contractor or his Sub-Contractors / other agencies, for the work shall be duly and adequately qualified with relevant experience to handle the work of the contract to the satisfaction of the Engineer-in-Charge.

- 7.1.5 The Contractor shall establish, a Site Office at each job site within 10 (ten) days of receipt of notification of Acceptance of Tender and maintain the same till completion of all obligations under the Contract. The Site Office shall in any case remain manned on all working days of the Owner during the working hours of the Owner.
- 7.1.6 The Contractor shall co-operate with and afford assistance to the Owner and other Contractors engaged at the site, as regards access to the work spots and supply of power and water for the performance of the work entrusted to them and / or for the carriage and storage of materials by them. If the performance of any work by the Contractor requires the association, collaboration with any other Contractor(s), the Contractor shall co-operate with the Owner or such other Contractor(s) / agency(ies) involved so as to ensure harmonious working between the Contractor and the Owner / Contractor(s) / agency(ies) involved, and the Contractor shall comply with any instructions issued by the Engineer-in-Charge in this regard.
- 7.1.7 The Owner shall be entitled, at its discretion, to appoint one or more engineers and / or other personnel at or about each job site on behalf of the Owner to do such acts, deeds, matters and things as may be necessary to safeguard the Owner's interest including (but not limited to, at the discretion of the Owner), supervision and testing of the work(s) being conducted by the Contractor at the job site and for rendering of such assistance to the Contractor relative thereto as the Owner or such engineer(s) or personnel shall or may deem fit; it being understood, however, that the presence of, any engineer(s) or personnel of the Owner at or about each job site or any supervision, inspection or test performed or conducted by any such engineer(s) or personnel of the Owner in respect of any work (s) or any other assistance rendered by such engineer(s) and / or personnel of the Contractor relative thereto, shall be without any attendant obligation or liability of the Owner vis-a-vis the Contractor, nor shall it relieve or dilute the obligations of the Contractor under the Contract.
- 7.1.8 The Contractor shall, before commencing work, bring to the notice of the Engineer-in-Charge in writing any defects existing in any prior works, upon which or in continuation of which the Contractor is required to execute the contracted Work.

7.2 Job Site :

- 7.2.1 The Owner shall furnish the Contractor with only four corners of the job site and a level bench mark, and the Contractor shall at his own cost and initiative to set out the work accurately and shall be solely responsible for the accuracy of such setting-up notwithstanding any assistance rendered by the Engineer-in-charge.

- 7.2.2 The Contractor shall provide, fix and be responsible for the maintenance of all stakes, templates, level marks, profiles and the like and shall ensure that they are in the respective position(s) till completion of the Work. The Contractor shall also be responsible for the maintenance of all survey marks, boundary marks, distance marks and center line marks, whether existing or supplied / fixed by the Contractor.
- 7.2.3 Before commencing the work the Contractor shall at his own cost and arrangement, provide the necessary reference and level posts, pegs, bamboos, flags, ranging rods, strings and other materials for proper layout of the work in accordance with scheme for bench marks acceptable to the Site Engineer. The centre, longitudinal or face line and cross line shall be marked by means of small masonry pillars. Each pillar shall have a distinct mark at the centre to enable a theodolite to be set over it. No civil work shall be started until all these co-ordinates are approved by the Site Engineer in writing in all cases, wherever required under the terms of the contract. The Contractor shall be responsible in respect of adequacy or accuracy of the co-ordinates. The Contractor shall also provide all labour, material and other facilities necessary for the proper checking of layout and inspection of the points during construction.
- 7.2.4 Pillars bearing geodetic marks located at the sites of works under construction, should be protected and fenced by the Contractor.
- 7.2.5 On completion of works the Contractor must submit to the Engineer-in-Charge the geodetic documents according to which the work was carried out.
- 7.2.6 The Contractor shall be solely responsible for the provision of and the maintenance of the horizontal and vertical alignment(s), level and for the correctness of every part of the work in accordance therewith. The Contractor shall, at his own cost, rectify any error or deviation in this regard.

7.3 Conditions of Work :

- 7.3.1 Ordinarily Work shall be carried on for a minimum of 48 (forty eight) hours a week at the rate of 8 (eight) hours per working day. When necessary the Contractor shall work overtime or in two or more shifts in a day so as to accomplish the Work within the stipulated time. However the Contractor shall not be entitled to any extra compensation or remuneration for overtime or double or triple shift working, nor shall the Owner be responsible for any idle time payments to the Contractor's staff or for labour, equipment or machinery, howsoever occasioned.

- 7.3.2 Should it become necessary to work on Sunday and / or holiday so as to accomplish the Work within the stipulated time, the Contractor shall so work without extra compensation. In the event of work proposed to be carried out by the Contractor's personnel at any time on a non-working day of the Owner, the Contractor shall inform the Engineer-in-charge of such plan at least 2(two) days in advance.
- 7.3.3 The execution of the work(s) shall ordinarily entail working during rain or the monsoon period to the extent necessary, and the Contractor shall maintain at each job site requisite material, labour, protective equipment and machinery as may be required for the uninterrupted performance of the work during such period.
- 7.3.4 The Contractor shall arrange for and bring to each job site such special equipment and machinery as may be necessary to enable work during the monsoon, and shall, at his own cost, arrange for de-watering the job sites so as to keep the construction site and areas to be worked upon, suitable for carrying on the work.
- 7.3.5 The Contractor shall not be entitled to any compensation or remuneration for or relative to any work during the monsoon, or for or relative to any and all special arrangements to be made to enable such working.

7.4 Time for Completion :

- 7.4.1 Time shall be the essence of the contract even if the contract empowers the Owner to grant extension of time in certain circumstances. The Contractor shall complete the entire Work in all respects and in accordance with the terms of the Contract within the time specified in this behalf in the Time Schedule.
- 7.4.2 Within 10 (Ten) days from the date of receipt of notification of Acceptance of Tender, the Contractor shall submit to the Owner for approval, in respect of each job site or groups of work, if circumstances so require, a detailed provisional Progress Schedule in PERT chart or other suitable form giving dates of starting and finishing of various operations and works, providing sufficient margin to cover for contingencies and for final testing and consequential reparation, etc., if any, required. Within 10 (Ten) days of submission of the provisional Progress Schedule, the Engineer-in-charge in consultation with the Contractor shall finalise the Progress Schedule. The Progress Schedule so finalised shall be the Approved Progress Schedule and shall form part of the Contract terms with attendant obligation upon Contractor to commence the various works / operations involved on or before the date(s) mentioned in such Approved Progress Schedule and to conclude the said work(s) / operation(s) on or before date mentioned in this behalf in the Approved Progress Schedule, and default by Contractor to commence or complete any work or operation within prescribed date(s), shall constitute breach of contract terms by the Contractor.

- 7.4.3 If the Contractor fails to submit to Owner a provisional Progress Schedule as envisaged in Clause 7.4.2 it shall be permissible to the Engineer-in-Charge to prepare and issue a Progress Schedule in PERT chart or other suitable form and such Progress Schedule shall be treated as the Approved Progress Schedule for the purposes of the Contract.
- 7.4.4 After receipt of notification of Acceptance of Tender, if any event or circumstance arises whereby the Contractor considers himself justified to seek postponement of the commencement of the Work, and / or to an extension of time for completion of the Work, the Contractor shall forthwith make a full report in writing of such event or circumstance to the Engineer-in-charge and as soon thereafter as possible the Contractor shall submit a written request to the Engineer-in-Charge for the postponement of the commencement of the Work or extension of time for completion of the Work. Such written request shall contain full justification for the request and the period of postponement / extension sought with respect to the Approved Progress Schedule. On consideration of such request, the Engineer-in-Charge shall, within reasonable period and by a written order, reject or grant the request in full or in part, as considered appropriate. It shall not be necessary for the Engineer-in-Charge to hear the Contractor before deciding the matter nor shall it be necessary for the Engineer-in-Charge to give reasons for the decision. The decision of the Engineer-in-Charge in this regard shall be final and binding upon the Contractor. Unless and until a written decision to such effect has been issued by the Engineer-in-Charge in this regard, the Contractor shall not be entitled to assume that the request for postponement and / or extension has been granted or agreed to by the Owner.
- 7.4.5 The power under Clause 7.4.4 shall be without prejudice to the power and right of the Owner, to permit / direct or grant, if considered necessary and appropriate, the postponement of the commencement of the Work, and / or an extension of time for completion of the Work.
- 7.4.6 Subject as elsewhere herein or in the Contract Documents expressly provided, only the existence of *force majeure* circumstances as defined in Clause 7.8 hereof shall afford the Contractor a ground for extension of time for completion of the work or any part of the work or any operation(s) involved therein, and specifically without prejudice to the generality foregoing, inclement or unforeseen weather, strike, shut-down, third party breach, delay in payment or commercial hardship shall not afford Contractor a ground for extension of time or relieve the Contractor of his full obligations under the Contract, nor will any shut-down or idle time charges be payable by Owner to Contractor for any delay in the commencement, progress or completion of the work due to any reason whatsoever, inclusive due to the existence of *force majeure* circumstances.

- 7.4.7 Notwithstanding other provisions contained herein, the postponement of the commencement of the Work, and / or an extension of time for completion of the Work shall be operative and binding, if and only if, the Owner or on his behalf the Engineer-in-charge, has issued a written communication to such effect addressed to the Contractor specifying the period of postponement or extension. Any change or modification to the Approved Progress Schedule shall not have effect unless it is made pursuant to and in conformity with the written communication authorising the postponement of the commencement of the Work, and / or an extension of time for completion of the Work issued by the Owner / Engineer-in-charge.
- 7.4.8 Time shall be the essence of the Contract. If there is delay in the final completion of the Work, or the work at any job site or in specific works in respect of which a separate Progress Schedule has been established, beyond the date stipulated in the Progress Schedule for the completion of such Work or works as case may be, or if the Contractor repudiates the Contract before such stipulated date, the Owner shall (without prejudice to any other right of Owner in this behalf) be entitled to recover from the Contractor as agreed liquidated damages and not by way of penalty, a sum equivalent to $\frac{1}{2}\%$ (one-half percent) of the total Contract Value per week or part thereof of such delay, limited to a maximum of 10% (Ten percent) of the total Contract Value, as constituting a genuine pre-estimate of damages duly agreed by the Parties. Liquidated damages for delay, to the extent due, may be recovered by the Owner, from the sums payable to the Contractor 'on account' or from running bills and the provisions herein shall constitute notice to the Contractor of the Owner's intention to claim compensation for the non-completion of the Work or works, as the case may be, within the stipulated time.
- 7.4.9 The levy of liquidated damages in terms of the preceding sub-clause shall be in addition to any and all other remedies and levies provided elsewhere in this GCC or in the respective contract agreement.

7.5 Reports and Records :

- 7.5.1 The Contractor shall, maintain at his expense, in addition to any records or registers required to be maintained by the Contractor under any law, rule or regulation having the force of law, such records and registers and at such place(s) as the Engineer-in-Charge by written direction requires the Contractor to do.
- 7.5.2 In addition to any other records or registers to be maintained by the Contractor from time to time and / or reports required to be furnished by the Contractor, the Contractor shall daily or otherwise as may be prescribed by Engineer-in-Charge, submit to the Engineer-in-charge a Progress Report of all work done and / or progress achieved by the Contractor at each job site within the preceding day or the period of last report, as the case may be.

7.5.3 The submission of such report to the Engineer-in-charge shall be without prejudice to the full rights and remedies of Owner and obligations / liabilities of Contractor under the Contract, and shall not anyway operate as an estoppel against Owner by reason only of the fact that no notice or objection was taken of any information contained in any such report; nor shall any statement in any such report be deemed to be correct merely by virtue of the existence of such statement, and it being uncontroverted by the Owner.

7.5.4 The Contractor shall maintain at each job site a Site Order / Site Instructions Book in which all orders and instructions received from the Owner / Engineer-in-Charge / Site Engineer, whether in writing or verbally, shall be entered and authenticated by the Owner/ Engineer-in-Charge / Site Engineer. The Contractor or his authorised representative shall signify in the appropriate column of the Site Order / Site Instructions Book, acknowledgement of every entry on the same day, failing which as soon as practicable. This book shall be kept available for inspection by the Officers of the Owner.

7.6 Execution of Work :

7.6.1 The Contractor shall provide sufficient labour, staff (qualified and unqualified), machinery, tools and equipment, material and things whatsoever necessary for the proper performance of the work and to ensure the rate of progress as envisaged in the Progress Schedule.

7.6.2 If it comes to the notice of the Engineer-in-Charge that the work(s) / operation(s) at any job site or as a whole is / are not meeting the progress necessary to achieve the relative date of completion in the Progress Schedule, the Engineer-in-Charge shall have the power to advise the Contractor to employ / provide additional labour, staff, machinery, tools, equipment or material so as to achieve the required progress. Provided that nothing herein shall be construed as casting any duty on the Owner to so advise nor shall it in any manner dilute the contractual obligations of the Contractor.

7.6.3 Should Contractor fail to comply with such instruction(s) or fail to comply therewith to the satisfaction of the Engineer-in-Charge (the opinion of either of whom in this behalf shall be final and binding upon the Contractor) the Engineer-in-Charge may, at his discretion, at the risk and cost of Contractor appoint, procure or provide the additional labour / staff / machinery / tools / material, etc., as the Engineer-in-Charge (the decision of either of whom in this behalf shall be final and binding upon the Contractors), considers necessary to achieve the necessary progress in relation to any particular work / operation or the work as a whole or may appoint sub-contractor(s) for the performance of any particular work or operation. In so doing, Engineer-in-Charge shall

be deemed to be acting for and on behalf of and as agent of the Contractor and all such appointments, procurement / provision shall be deemed to have been made by the Contractor and shall be paid for by the Contractor. In addition to the other amounts payable to Owner under Section 6 hereof in respect of any labour / staff / machinery / material, etc., as aforesaid procured or provided by the Owner, the Owner shall be entitled in this event to 15% (fifteen percent) as supervision charges on the total amount due as computed under Section 6 hereof.

7.6.4 Should the Engineer-in-Charge at any stage (notwithstanding that the time for completion of the relative work or item of work as specified in the Progress Schedule has not expired) be of opinion (the opinion of the Engineer-in-Charge in this behalf being final) that the performance of any work or item of work by the Contractor is unsatisfactory (whether in the rate of progress, the manner, quality or workmanship of the performance, or in the adherence to specifications, or in the omission, neglect or failure to do, perform, complete or finish any work or items, or for any other cause whatsoever), the Engineer-in-Charge shall be entitled (without prejudice to any other rights of the Owner and / or obligations of the Contractor under the Contract) at his discretion and the risk and cost of the Contractor either to appoint, procure and / or provide such labour / staff / machinery / tools / materials, etc., as the Engineer-in-Charge (the decision of either of whom shall be final and binding upon the Contractor) considers necessary to achieve satisfaction in relation to the particular work, operation or item of work, or the work as a whole, as the case may be, or to appoint one or more sub-contractors for the satisfactory performance thereof or any part thereof, or may undertake the performance thereof or any part thereof departmentally, and the provisions of Clause 7.6.3 hereof shall *mutatis mutandis* apply to any action taken by the Engineer-in-Charge pursuant to this clause in the same manner as applicable to an action taken under the said clause.

7.7 Sub-Contracts :

7.7.1 The Contractor shall not assign, sub-contract or sublet the whole or any part of the work except with previous written consent of Engineer-in-Charge, and to such extent and subject to such conditions as may be imposed by the Engineer-in-Charge; provided that grant of such consent by the Owner shall not in any manner dilute the contractual obligations of the Contractor. Provided further that it shall be permissible for the Owner to withdraw or modify the consent once granted with respect to any sub-contractor, on grounds of unsatisfactory service or other valid reasons.

7.7.2 Subject as hereinabove in this behalf specifically permitted and provided, the Contractor shall not sub-contract any work under the Contract.

7.7.3 The Contractor shall, before the fourth of every month, furnish to the Engineer-in-Charge a list of all Sub-Contractors engaged in work at the site during the previous month, with particulars of the nature of the work performed by them.

7.8 Force Majeure :

7.8.1 Definition

“Force Majeure” means any act, circumstance or event or a combination of acts, circumstances and events which wholly or partially prevents or delays the performance of obligations arising under this Agreement if such act, circumstance or event is not reasonably within the control of and not caused by the fault or negligence of the non-performing Party, and provided that such act, circumstance or event is in one or more of the following categories:

- (a) Flood, drought, lightning, cyclone, earthquake or geological disturbances, eruption of gases and such like natural occurrences.
- (b) Major explosion, fire and contamination of atmosphere by radio active or hazardous substances.
- (c) Civil disturbance including riot, terrorism, rebellion, sabotage and communal clashes.
- (d) Acts of God or the public enemy.
- (e) Any law, ordinance or order of the Central or State Government, or any direction of a statutory regulatory authority that restricts performance of the obligations hereunder.

Any of the above acts, circumstances or events that affect any of Owner’s or Contractor’s subcontractors under this Agreement shall be deemed a Force Majeure event of the Owner or Contractor, as the case may be.

Provided that a Force Majeure act, circumstance or event shall not include economic hardship, equipment failure or breakdown other than as specifically set forth above.

7.8.2 Burden of Proof

In the event the Parties are unable to agree in good faith that a Force Majeure act, circumstance or event has occurred, the Parties shall resolve the dispute in accordance

with the provisions of this Agreement. The burden of proof as to whether a Force Majeure act, circumstance or event has occurred shall be upon the Party claiming the occurrence or existence of such Force Majeure act, circumstance or event.

7.8.3 Effect of Force Majeure

If either Party is rendered wholly or partially unable to perform its obligations under this Agreement because of a Force Majeure act, circumstance or event, that Party shall be excused from whatever performance is affected by the Force Majeure act, circumstance or event to the extent so affected, provided that

- (a) Within five (5) Business Days after the occurrence of the inability to perform due to a Force Majeure act, circumstance or event, the non-performing Party provides a written notice to the other Party of the particulars of the occurrence, including an estimation of its expected duration and probable impact on the performance of its obligations hereunder, and continues to furnish periodic reports with respect thereto, every 7 days, during the period of Force Majeure;
- (b) the non-performing Party shall use all reasonable efforts to continue to perform its obligations hereunder and to correct or cure as soon as possible the act, circumstance or event constituting the Force Majeure;
- (c) The suspension of performance shall be of no greater scope and no longer duration than is reasonably necessitated by the Force Majeure act, circumstance or event;
- (d) The non-performing Party shall provide the other Party with prompt notice of the cessation of the Force Majeure act, circumstance or event giving rise to the excuse from performance and shall thereupon resume normal performance of obligations under this Agreement with utmost promptitude;
- (e) The non-performance of any obligation of either Party that was required to be performed prior to the occurrence of a Force Majeure act, circumstance or event shall not be excused as a result of such subsequent Force Majeure act, circumstance or event;
- (f) The occurrence of a Force Majeure act, circumstance or event shall not relieve either Party from its obligations to make any payment hereunder for performance rendered prior to the occurrence of Force Majeure or for partial performance hereunder during periods of Force Majeure;
- (g) The Force Majeure act, circumstance or event shall not relieve either Party from its obligation to comply with Applicable Laws;
- (h) The non-performing Party shall exercise all reasonable efforts, at their own expense, to mitigate or limit damages to the other Party.

SECTION 8

INSPECTION AND TESTING

8.1 Inspection and Testing of Materials :

- 8.1.1. The Owner shall be entitled at all times at the risk of Contractor to inspect and / or test by itself or through an independent person(s) / agency(ies) appointed by the Owner and / or to direct the Contractor to inspect and / or test all materials, items and components whatsoever supplied or proposed for supply for incorporation in the works inclusive during the course of manufacture or fabrication by the Contractor and / or at the Contractor's work or otherwise, of such material, item or component. The inspection and / or tests shall be conducted at the expense of the Contractor, and if conducted by the Contractor, may be directed by the Owner to be conducted by agency(ies) nominated by the Owner and / or in the presence of a witness(es) or agency(ies) nominated by the Owner.
- 8.1.2 Where the manufacture / fabrication of any material, item or component intended for incorporation in this work is being done by any person(s) other than the Contractor and / or in the premises / workshop (wherever situated) of any person other than the Contractor, the Contractor shall procure and arrange for the inspection and / or tests thereof with such other person(s) and shall provide the Owner and / or its agents every facility and assistance necessary for the inspection and / or tests.
- 8.1.3 In the event of inspection and / or testing of any material(s) by the Owner, the Contractor or his authorised representative shall be entitled to be present at the place of such inspection and / or testing.
- 8.1.4 The Contractor shall furnish to the Engineer-in-charge for approval when requested or as required by the specifications in the contract documents, sample(s) of all materials and finishes intended for incorporation in the works. Such samples shall be submitted before the work is commenced permitting sufficient time for tests / examination(s) thereof by the Owner. All materials furnished and finishes incorporated in the work shall conform to the approved sample(s) in all respect.
- 8.1.5 The Engineer-in-charge shall be entitled to reject at any time any material, item or component (including specially manufactured or fabricated items and components) that are defective or not in accordance with the specifications and which are supplied by the Contractor for incorporation in the works and upon such rejection the Contractor shall either perform such work or make necessary improvements thereon as shall be necessary to bring the material item / component to the requisite standard, or shall, if

so required by the Engineer-in-charge (whose decision in this behalf shall be final) replace the rejected material / item / component at his own cost and expense (without additional remuneration or compensation in respect thereof) with material(s) / item(s) / component(s) approved by the Engineer-in-charge.

8.2 Inspection and Testing of Works :

- 8.2.1 The Contractor shall at all times ensure highest standards of workmanship relative to the work. The Engineer-in-charge shall have power to inspect the work in all respects at any and all times up to completion of the work as also to test or instruct the Contractor, to test the works or any structure, material and component thereof at the risks and cost of the Contractor, either by the Contractor or by any agency(ies) nominated by the Engineer-in-Charge in this behalf.
- 8.2.2 The Contractor shall provide all facilities, instruments, material / labour and accommodation required for testing the works (including checking the setting out of the work) and shall afford the Engineer-in-charge all assistance necessary to conduct the tests.
- 8.2.3 The Contractor shall also provide and keep at all times during the progress of the work and maintenance period, proper means of access to the works and every part thereof by means of ladders, gangways, etc., and the necessary personnel / materials to move and set up the same as directed by the Engineer-in-charge for inspection or measurement of the works.
- 8.2.4 On no account shall the Contractor proceed with concreting or other work in foundations and in superstructure by covering up or otherwise placing beyond reach of inspection or measurement any work, before due authentication of the corresponding entries in the Site Inspection Register by the Engineer-in-charge or his authorised representative. Should the Contractor do so, the same shall be uncovered at Contractor's risk and expense for carrying out the inspection and measurement.
- 8.2.5 Should the Contractor fail to comply with any of the foregoing provisions relative to inspection and / or testing of the works, the Engineer-in-charge shall in his absolute discretion be entitled to remove / dismantle and / or uncover, as the case may be, at the risk and cost of Contractor for test and examination any structure, material or component thereof installed, erected or put up by the Contractor and to conduct or have conducted, the test(s) and / or examination at the risk and cost of the Contractor. In such event the Contractor shall also bear the risks and costs of replacement, reinstallation or re-erection of the concerned structure / material / component, as the case may be.

- 8.2.6 Notwithstanding anything provided in the foregoing clauses hereof, the Contractor shall be and remain liable at his own cost and initiative to conduct all tests at all relevant times during supply, erection and installation of any works, structure, material or component as shall be required in terms of the Contract Documents or by the Engineer-in-Charge. Such tests, wherever required / permissible shall be conducted through agency(ies) or laboratory(ies) specified or approved by the Engineer-in-Charge in this behalf.
- 8.2.7 Should the Engineer-in-charge on inspection or test be not satisfied with the quality or workmanship of any work, structure, material or component (the decision of the Engineer-in-charge being final in this behalf), the Contractor shall re-perform, replace, re-install and / or re-erect, as the case may be, such work, structure, material or component, and no such rejected work structure, material or item or component shall be re-used with reference to the work except with the prior permission of the Engineer-in-charge, and the provisions of Clause 8.2.8 hereof shall apply to default by the Contractor of the provisions of this clause.
- 8.2.8 Should the Contractor fail to re-perform, replace, re-install and / or re-erect, as the case may be, any work, structure, material or component rejected or found defective in terms of Clause 8.2.7 hereof within such period as the Engineer-in-Charge may specify by written notice to the Contractor in this behalf, the Contractor shall be deemed to be in breach of contract within the provision of Clause 11.1.1 hereof with regard to termination of Contract and associated provisions thereunder and the Owner shall be entitled (without prejudice to any other right or remedy available to the Owner) upon expiry of the period specified in said notice, demolish and / or remove the rejected / defective work, structure, material or component and re-perform, replace, re-install and / or re-erect, as the case may be, the same by itself or through other agency or Contractor at the risks and costs of the Contractor in all respects, and recover the costs incurred by the Owner in this behalf together with a supervision charge of 15 % (fifteen percent) thereon admissible to the Owner, and the Owner shall be entitled (without prejudice to any other mode of recovery) to deduct the sums due from the Running Account / Final Bill(s) of the Contract or any monies becoming due to the Contractor from time to time from the Owner in any other contract, and the decision of the Engineer-in-Charge as to the costs incurred by the Owner as aforesaid shall be final and binding upon the Contractor.

8.3 Final Tests and Possession of Works :

- 8.3.1 As soon as the works have been completed in all respects in terms of the Contract, Final tests of the works shall be undertaken by the Contractor at the risks and costs of the Contractor in the presence of the Engineer-in-charge or his authorised representative. The Owner may at its discretion permit Final Test in respect of particular part(s) or group(s) of the works or in respect of particular job site(s) involved.

- 8.3.2 Upon satisfactory conclusion of the Final Tests, Engineer-in-charge shall prepare a Final Test Certificate witnessed by the Contractor which shall certify the date(s) on which the Final Tests in respect of the works have been successfully completed, and where Final Tests have been conducted piecemeal, shall certify the date on which the Final Test in respect of concerned part(s) / section(s) / group(s) / job site(s) have been successfully completed. Notwithstanding that the Final Tests have been conducted in respect of the entire works, the Owner shall be required to issue a Final test Certificate only in respect of those particular part, section, group or job site with respect to which the test / performance is in conformity with the Contract Specifications.
- 8.3.3 As and from the date of successful completion of Final Tests as mentioned in the Final Test Certificate, the Owner shall be deemed to have taken over the work(s) / part(s) / section(s) / group(s) in respect of which the Final Test Certificate has been issued, but subject to conditions if any stated in such certificate.
- 8.3.4 If during Final Tests or prior thereto any defect(s) in the design (insofar as the work involved any designing on the part of the Contractor), or in any work performed, or in any structure or component installed / erected, or in any installations / erections, or in any material, or other items incorporated in the works, is / are noticed by Engineer-in-Charge, the Contractor shall forthwith rectify the defect(s) to the satisfaction of the Engineer-in-charge and if the defect(s) be discovered during the Final Tests, the Contractor shall thereafter repeat the Final tests or such of part of it as may be required to be repeated until successful conclusion of Final Tests without any defect in respect of the entire works.
- 8.3.5 Should the Contractor fail to so rectify any defects as aforesaid, the provision of Clause 8.2.8 hereof shall *mutatis mutandis* apply.
- 8.3.6 Notwithstanding anything provided in Clause 8.3.3 hereof, the Owner shall be entitled without prejudice to any other rights of the Owner or liabilities of the Contractor under the Contract, including the rights of the Owner under Clause 7.4.8 hereof and associated clauses thereunder and Clause 11.1.1 hereof and associated clauses thereunder:
- (a) If by reason of any default on the part of the Contractor a Final Test Certificate has not been issued in respect of the entire works within 30 (thirty) days after the date fixed for completion of the entire works at all job sites in the Progress Schedule(s), to take over and use such portion of works in respect of which Final Test Certificate has not been issued, with or without affording the Contractor further opportunity for completing the works for issue of the Final Test Certificate. In such event, a contractor will be entitled to payment with respect to the portion of work so taken

over as agreed between the parties but not exceeding the proportionate part of the contract price.

- (b) At any time during the progress of the works, notwithstanding that time for the completion of the entire works or concerned part, portion or section thereof according to the Progress Schedule(s) shall not have expired, take over and / or use for any purpose the incomplete or partially completed work or any part or portion or section thereof as the case may be, and give the Contractor an opportunity for completing the work or relative part or portion or section thereof, as the case may be, within the time for completion permitted thereof under the Progress Schedule and if in the opinion of the Contractor such taking over and or use shall require an extension of time for completion, the provision of Clause 7.4.4 hereof and associated clauses thereunder relating to extension of time shall apply.

Provided always that takeover, possession or use of the works or any part or portion or section thereof by the Owner within the provisions of sub-clauses (a) and / or (b) above shall not be deemed to be an acceptance of work or relative part or portion or section thereof by the Owner or relieve the Contractor of his full obligations in respect thereof under the Contractor.

8.4 Completion Certificate :

- 8.4.1 Within 7 (seven) days of issue of Final Test Certificate in respect of the works at any job site covered by the Contract, the Contractor shall clear the job site of all scaffolding, wiring, pipes, surplus materials, Contractor's labour, equipment and machinery and shall demolish, dismantle and remove all Contractor's site office and quarter and other temporary works, structures and constructions and other item and things whatsoever brought upon or erected at the job site or any land allotted to the Contractor by the Owner and not incorporated in the permanent works and shall remove all rubbish from the job site and the land allotted to Contractor and shall clear, level and dress the job site and said land to the satisfaction of the Site Engineer and shall put the Owner in undisputed custody and possession of the job site and all land allotted by the Owner to the Contractor, and unless the Contractor shall have fulfilled the provisions of the clause, the works shall not be deemed to have been completed, and failing compliance by the Contractor of the provisions of this clause, the provisions of Clause 11.2.4 hereof relating to Termination of Contract and associated provision thereunder shall apply.
- 8.4.2 Upon the satisfactory fulfillment by Contractor of the provisions of Clause 8.4.1 thereof, and upon submission of the following documents, the Contractor shall be entitled to apply to the Engineer-in-Charge in the prescribed format, for a Completion Certificate in respect of the entire work or work at any job site:

- (i) The Technical Documents according to which the work was carried out.
- (ii) Complete set of working drawings showing therein correction and modifications (if any) made during the course of execution of the works, signed by the Engineer-in-Charge.
- (iii) Certificate of final levels as set for various works, signed by the Engineer-in-charge.
- (iv) Final Test Certificate.
- (v) Certificate of Engineer-in-charge of satisfactory fulfillment of the provisions of Clause 8.4.1 hereof.
- (vi) List of Owner supplied surplus material returned to Owner's stores, signed by the Engineer-in-charge
- (vii) Materials at site accounting for Owner supplied materials, signed by the Engineer-in-charge
- (viii) List of the scrap materials returned to Store, signed by the Engineer-in-charge and
- (ix) Discharge Certificate in respect of Owner supplied equipment and machinery signed by the Engineer-in-charge.

8.4.3 If the Engineer-in-Charge is satisfied of the completion of the work relative to which the Completion Certificate has been sought and of the completeness in all respects of the Documents specified in Clause 8.4.2 hereof, the Engineer-in-Charge shall within 30 (Thirty) days of the receipt of the application for Completion Certificate, issue a Completion Certificate in respect of the works for which the Completion Certificate has been applied. The Completion Certificate shall specify the date of completion of the Work.

8.4.4 The issue of a Completion Certificate shall be without prejudice to the Owner's rights and Contractor's liabilities under the Contract, including the Contractor's liability for the defect liability period under Clause 8.5.1 hereof nor shall the issue of a Completion Certificate in respect of the works or work at any job site be construed as a waiver of any right or claim of the Owner against the Contractor in respect of work or the works at the job site in respect of which the Completion Certificate has been issued.

8.4.5 Up to and until issue of the Completion Certificate as provided for herein above in respect of the work or the works at any job site, the relative work(s) shall be and remain at the risks of the Contractor in all respects, including (but not limited to) accident, fire, lightning, earthquake, flood, storm, tempest, riot, civil commotion and / or war.

8.5 Defect Liability Period and Latent Defects :

- 8.5.1 Unless otherwise specified, the Defect Liability Period for the Work shall be 12 (Twelve) months from the date specified in the Completion Certificate as the date of completion of the Work . The Contractor shall at his own cost and initiative, correct, repair and / or rectify any and all defect(s) and / or imperfections in the design of the work (insofar as the Contractor shall be concerned with the design of the work or any part thereof) and / or in the work performed and / or materials, components or other items incorporated therein as shall arise or be discovered during the said Defect Liability Period. In the event of the Contractor failing to do so the provisions of Clause 8.2.8 hereof shall apply.
- 8.5.2 The Defect Liability Period for the Work shall remain extended beyond the initial period of 12 months, in all cases wherein Clause 8.5.1 is attracted, till the defect(s) are repaired / rectified.

SECTION 9

MEASUREMENTS AND PAYMENT

9.1 Final Measurements :

9.1.1. Within 15 (fifteen) days from the date of issue of Final Test Certificate in respect of the Work, or of any portion of the works, section, group or job site, as the case may be, Final Measurements for the works covered by the Final Test Certificate shall be jointly taken by the Engineer-in-charge and the Contractor as herein provided.

9.1.2 If the Contractor fails to apply to the Engineer-in-Charge for Final Measurements within 15 (fifteen) days from the date of relative Final Test Certificate as specified in Clause 9.1.1, the Engineer-in-charge shall notify the Contractor in writing of the date(s) for Final Measurements, and require the Contractor to be present on date(s) so notified.

9.2 Mode of Measurement :

9.2.1 All measurements shall be recorded in the metric system, and shall be taken in accordance with the procedures set forth or provided for in the Schedule of Rates, Specifications and other Contract Documents.

9.2.2 Where the mode of measurement is not provided for in the Contract Documents in respect of any item of work, it shall be measured in accordance with the Indian Standard Specification No. 1200 (latest edition) and in the event of such item not being covered by Indian Standard Specifications, it shall be measured in accordance with the method of measurement in this behalf specified by the Engineer-in-Charge, whose decision in this regard shall be final and binding upon the Contractor.

9.2.3 All measurements shall be taken jointly by the Engineer-in-charge and the Contractor or their respective representatives. The Contractor or his authorized representative shall be entitled to remain present at all times when joint measurements are being taken.

9.2.4 Despite due intimation, if the Contractor omits or fails to be present to witness joint measurements, the measurements shall be taken in the presence of the Engineer-in-charge and the measurements so recorded and signified by the Engineer-in-charge as correct, shall be final and binding upon the Parties.

- 9.2.5 Except in cases covered by Clause 9.2.4, in all other cases measurements shall be signed and dated on each page by the Contractor / Contractor's representative and Engineer-in-charge or his representative. If the Contractor objects to any of the measurements recorded, including the mode of measurement, such objection shall be noted in the measurement book against the item objected to and such note shall be dated and authenticated by the Contractor / Contractor's representative and Engineer-in-charge or his representative. In the absence of any objection noted as aforesaid, the Contractor shall be deemed to have accepted the relative measurements as entered in the Measurement Book / Sheets and shall be barred from raising any objection in respect of any measurements recorded in the Measurement Book.
- 9.2.6 All objections noted in the Measurement Book in terms of Clause 9.2.5 shall be considered and decided within 15 days by the Engineer-in-Charge. The decision of the Engineer-in-Charge relative thereto (whether on the correct measurement to be adopted or on the mode of measurement to be adopted) shall be final and binding upon the Parties.
- 9.2.7 The measurement as finally recorded in terms of Clause 9.2.4 or Clause 9.2.5 or 9.2.6, as applicable, shall be the Final Measurement.

9.3 Final Bill :

- 9.3.1 On the basis of the Final Measurement the Contractor shall prepare a Final Bill in the prescribed form with reference to the total work covered by the Contract. Such Bill shall be drawn up by applying the applicable rate(s) specified in the Schedule of Rates to the relative measured quantity(ies) and submitted within 30 days from the date of final measurement or date of final decision as per Clause 9.2.6, whichever is later.
- 9.3.2 In the event of there being any difference or disputes between the Contractor and the Owner as to the item(s) of the Schedule of Rates applicable to any particular supply, work or operation either the Contractor or any representative of the Owner shall refer the matter to the Engineer-in-Charge and the decision of the Engineer-in-Charge on such matters shall be final and binding upon the Contractor. If the Engineer-in-Charge shall be of opinion (which opinion shall be final and binding upon the Contractor) that the disputed supply work or operation is not covered by any item in the Schedule of Rates, the Engineer-in-Charge shall determine the applicable rate(s) in respect thereof, according to the provisions of Clause 5.3.3 hereof, and the rate(s) so determined by the Engineer-in-Charge shall be final and binding on the contractor.
- 9.3.3 The Final Bill shall contain all the claims of the Contractor including those in terms of Clause 9.7.3.

- 9.3.4 The Final Bill shall be submitted to the Owner for payment in quadruplicate accompanied by the Completion Certificate relating to the works covered by the Final Bill.
- 9.3.5 Monies payable under the Contract shall not become due and payable to the Contractor until submission to the Owner of the Final Bill prepared in accordance with the provisions of this Chapter. The Owner shall make payment based on the Final Bill to the extent admitted by the Owner and subject to any set-off, recoveries, or other adjustments within 90 (ninety) days of the receipt of the Final Bill complete in all respects. Any delay in payment on undisputed claim / amount beyond 90 days of the receipt of the Final Bill, complete in all respects, will attract interest @ 0.5% per month. No interest will be paid or payable on disputed claims.
- 9.3.6 All payments due to the Contractor on the Final Bill shall be subject to deduction on account of Security Deposit as provided for in Clause 4.4, 4.5, liquidated damages, if applicable, any other dues from the contractor to Owner, Income tax as provided for in the Income Tax Act and other taxes and deductions as provided for under any law, rule or regulation having the force of law from time to time.

9.4 Schedule of Rates :

- 9.4.1 Nothing shall be due to the Contractor for or on account of the Work other than in terms of the provisions of this Chapter.
- 9.4.2 Without prejudice to the generality of the provisions of Clause 9.4.1 hereof, the Final Bill prepared based on the Schedule of Rates shall be deemed to include and cover :
- (a) All costs, expenses, outgoings and liabilities of every nature and description whatsoever and all risks whatsoever (foreseen or unforeseen) to be taken or which may occur in or relative to the execution, completion, testing and / or handing over the work to the Owner and / or in or relative to acquisition, loading, unloading, transportation, storing, working upon, using, converting, fabricating, erecting any item, equipment, material or component in or relative to the works and the Contractor shall be deemed to have known the nature, scope, magnitude and the extent of the works and items, materials, equipment, and components required for the proper and complete execution of the works though the Contract Documents may not fully and precisely set out, describe or specify them; and the generality hereof shall not be deemed to be anywise limited, restricted or abridged because in certain cases the Contract Documents or any of them expressly state that the Contractor shall do or perform any particular work or operation or supply of any particular item, article or material or perform any particular labour or service, or

because in certain cases the Contract Documents state a particular work, operation, supply, labour or service shall be performed / made by the Contractor at his own cost or without additional payment, compensation or charge or without entitlement of claim against the Owner or words to similar effect, and in other cases they do not, or because, in cases it is stated that the same are included in or covered by the Schedule of Rates and in other cases it is not so stated.

- (b) The cost of all constructional plant, equipment, supply of water and power, construction of temporary roads and access, temporary works, pumps, wiring, pipes, scaffolding, shuttering and other materials, supervision, labour, insurance, fuel, stores spares, supplies, appliances and other materials, items, articles and things whatsoever to be supplied, provided or arranged by the Contractor in or relative to or in connection with the performance and / or execution of each item specified in the Schedule of Rates and any related or incidental works or operations by expression or implication involved therein or incidental thereto, complete in every respect in accordance with the Contract Documents, and the plans, drawing, designs, orders and / or instructions.
- (c) The cost of all royalties, licence fees or other fees, duties, penalties, levies and damages whatsoever payable for or in respect of any protected or patented goods, materials, equipment or processes employed or relative to the works and all rents, royalties, licence fees and any other fee, duty, penalty, levy, loss or damages payable on the excavation, removal or transportation of any material or acquisition or use of any right of way or other rights, licences, permits, privileges or usages required for or relative to the performance of the works.
- (d) Except to the extent specifically provided in the Special Conditions of Contract, all customs duties, excise duties, stamp duties and other duties, sales tax and other direct and indirect taxes, quay and port dues or charges, and all their duties, taxes, fees, charges, levies, octroi and / or cesses whatsoever imposed by the Central Government or State Government or Municipal and Local Bodies or other Authorities whatsoever payable on any materials and / or works supplied or performed including materials incorporated in the works or brought to site for the performance of the work. Statutory variations, whether by imposition / abolition, or increase / decrease in rates or remission / exemption, with respect to duties, taxes and such like levies after the Base Date shall be to the account of the Contractor. The Base Date for this purpose shall mean the date fixed for submission of the bid or for opening the Price Cover, whichever is later.

- (e) The cost of all indemnities to the Owner and insurance premia on insurance required in terms of the Contract Documents or otherwise under any law, rule or regulation, and the cost of all risks of whatsoever (foreseen or unforeseen) including but not limited to risks of delay or extension of time or reduction or increase in the work or scope of work and / or cancellation of Contract and / or accidents strike, civil commotion, war, labour trouble, third party breach, fire, lightning, inclement weather, storm, tempest, flood, earthquake and other acts of God, Government regulation or imposition or restriction, dislocations of road, rail and other transport, access or facilities, flooding of site and / or access / roads / approaches thereto, suspension of work, sabotage and other cause whatsoever.
- (f) The cost of all materials supplied and / or intended for incorporation in the works delivered to the job site and stacked as instructed by the Engineer-in-Charge including (but not limited to) loading, transportation and unloading thereof, waste on materials, and return of empties.
- (g) Except to the extent specifically provided in the Special Conditions of Contract, the cost, if any, of all escalations (foreseen and unforeseen) including but not limited to labour cost and material cost.
- (h) All supervision charges, establishment charges, overheads, finance charges and other costs and expenses of and charges to the Contractor, and Contractor's profit relative to the work.

9.4.3 Notwithstanding any provisions to the contrary in these conditions the Engineer-in-Charge may at his absolute discretion agree to accept as complete any incomplete work or item of work or any defective work or item of work performed by the Contractor being at variance with the specifications, subject and upon the terms and conditions of this clause.

The condition of such acceptance shall be that the work / item of work concerned shall be deemed to be a work not covered by the Schedule of Rates within the meaning of Clause 5.3.3 hereof, and the Contractor shall be entitled to remuneration thereof only as determined by the Engineer-in-Charge in accordance with provisions of Clause 5.3.3 hereof and the provisions of the said clause shall in all respects *mutatis mutandis* apply to such work and the determination of the remuneration to the Contractor in respect thereof.

9.5 On Account Payments :

9.5.1 Without prejudice to the provision of Clause 9.3.5 hereof, the Owner may at its discretion

by way of assistance to the Contractor, make 'on account' payments to the Contractor, during the progress of the work and in terms of the Contract, on the basis of Running Account Bill as hereinafter more specifically mentioned.

- 9.5.2 The Contractor shall make a quantitative assessment of the work performed by Contractor at each job site during a month or such other period specified for the purpose and submit a Running Account Bill (in the form prescribed by the Owner) in quadruplicate to the Engineer-in-charge within 10 days of the expiry of the month / period, as the case may be, complete with detailed measurements. The Running Account Bill(s), are to be drawn by applying unit quantities measured to the applicable item(s) in the Schedule of Rates. The Engineer-in-Charge shall thereafter carry out summary verification of the work performed and the quantities entered in the Running Account Bill(s), and shall certify the Running Account Bill(s) for payment on basis of such verification, in full or partially.

Owner shall endeavour to make payment against complete Running Account Bills within 30 days of submission. However, in case of part payments or delay in payment beyond 30 days, the Contractor shall not be entitled to any interest.

- 9.5.3 Where the contract stipulates a lump sum as payable for the work or where a lump sum rate is stipulated in the Schedule of Rate(s) in respect of any particular work or part thereof and the works are not at any intervening stage capable of measurement, the Owner may at its discretion pay on a Running Account Bill prepared by the Contractor otherwise in accordance with the provisions of Clause 9.5.2 hereof, a percentage of the lump sum provided for the entirety of the work or item of the work, as the case may be, on the basis of a value assessment of such work certified for payment by the Engineer-in-Charge. The periodicity of the Running Account Bill for the purposes of this sub-Clause shall be as determined by the Engineer-in-charge.

- 9.5.4 No Running Account Bill(s) shall be made and / or certified for a total value of less than Rs.10,000 (Rupees ten thousand) .

- 9.5.5 The Owner shall be entitled to recover by deduction, withholding, set-off or adjustment from all "on account" payments, all dues to the Owner from the Contractor including, retention monies and other deductions provided for in any Contract, and taxes and other monies deductible within the provisions of the Income Tax Act or any other applicable law, rule or regulation for the time being in force.

- 9.5.6 All "on account" payments shall be regarded merely as advance payments against the amount due to the Contractor in terms of the Contract, and any such payment shall be without prejudice to the full rights of the Owner under the contract and the liabilities of the Contractor thereunder, and specifically shall not be regarded as an acceptance or completion of any works paid for in terms of any Running Account Bill or otherwise.

9.5.7 Nothing provided in the foregoing clause hereof shall anyway be deemed to confer any right or entitlement on the Contractor to receive “on account” payments, nor shall any failure or delay by the Owner to make any on account payments as herein envisaged or otherwise afford the Contractor a ground or basis to claim extension of time for completion, or additional payment(s), or otherwise relieve the Contractor from any of his liabilities under the contract.

9.5.8 Secured Advance on Materials

Contractor may be allowed “Secured Advance” on the security of materials brought to site for execution of the contracted item of work to the extent of 75% of the value of the materials as assessed by the Engineer-in-Charge provided that the materials are of an imperishable nature and that a formal agreement is drawn up with the Contractor under which the Owner secures a lien on the materials and is safeguarded against losses due to the Contractor postponing the execution of their proper watch and safe custody. Recoveries of advances so made would be postponed until the whole of the work entrusted to the Contractor is completed. They should be adjusted from his bills for work done as the materials are used, the necessary deductions being made whenever the items of the work in which they are used are billed for.

9.6 Mode of Payment :

All payments under or in terms of the Contract shall be made in official Indian Currency, by crossed “Account Payee” cheque sent to the registered office of the Contractor or other office notified in this behalf by the Contractor or delivered to the Contractor’s authorised representative. In addition the Contractor’s bank account number and its name may also be incorporated in the cheque. All cheques drawn shall be payable by the Owner’s bankers and in no case will the Owner be responsible if the cheque is mislaid, misappropriated or otherwise lost or stolen.

9.7 Claims by the Contractor :

9.7.1 Should the Contractor consider that he is entitled to any extra payment or compensation in respect of the works, over and above the amounts due in terms of the Contract as specified in Clause 9.4.1, or should the Contractor dispute the validity of any deductions made by the Owner from any Running Account Bills or from any payments due to him in terms of the Contract, the Contractor shall forthwith give notice in writing of his claim in this behalf to the Engineer-in-Charge within 10(Ten) days of the arising of the entitlement for the extra payment, or of the payment after deduction, as the case may

be, and such notice shall give full particulars of the nature of such claim, grounds on which it is based, and the amount claimed. The Contractor shall not be entitled to raise any claim nor shall the Owner anyway be liable in respect of any claim by the Contractor unless notice of such claim shall have been given by the Contractor to the Engineer-in-Charge in the manner and within the time aforesaid and on failure to do so the Contractor shall be deemed to have waived any and all claims and all his rights, if any, with respect to any extra payment howsoever due.

- 9.7.2 The Engineer-in-Charge shall be under no obligation to reply any notice or claim issued / made by the Contractor in terms of Clause 9.7.1 or otherwise, and the omission or failure on the part of the Engineer-in-Charge to formally reject any claim made or notified by the Contractor, or any delay in dealing with any such claim shall not constitute or be deemed to be an admission by the Owner of the validity of such claim, in full or part, or to be a waiver by the Owner of any right in respect thereof; subject however that all such claim otherwise valid within the provisions of Clause 9.7.1 read with Clause 9.7.3 and 9.7.4 shall be dealt with / considered by the Owner not later than together with the Final Bill.
- 9.7.3 Any or all claims of the Contractor notified in accordance with the provision of Clause 9.7.1 from time to time which subsist at the time of submission of the Final Bill by the Contractor shall be separately shown in the Final Bill together with particulars of the claim such as grounds on which it is based, and the amount claimed, and shall be supported by a copy(ies) of the relevant notice(s) in terms of Clause 9.7.1.
- 9.7.4 Any claim not specifically reflected and included in the Final Bill in accordance with the provisions of Clause 9.7.3 shall be deemed to have lapsed or to have been waived by the Contractor, and the Owner shall have no liability in respect of any such claim. The Contractor shall not be entitled to reflect or include in the Final Bill any claim(s) except in accordance with the provisions of Clause 9.7.3.
- 9.7.5 Notwithstanding that the Contractor has made a claim in terms of Clause 9.7.1, the Contractor shall be liable to continue to perform the works till completion in all respects and as per the Contract, unless prior termination of the Contract in terms of this contract.
- 9.7.6 Any “on account” payment to the Contractor in respect of a claim made by the Contractor in terms of Clause 9.7.1 shall not constitute or be deemed to be an acceptance by the Owner, in full or in part, of the relative claim.

9.8 Discharge of Owner's Liability :

- 9.8.1 Pursuant to submission of the Final Bill by the Contractor and on the Owner making the final payment, as due thereon, the Contractor shall not be entitled to any further or other payment with respect to the Work including with respect to claims, if any, made in accordance with Clause 9.7.1.
- 9.8.2 Notwithstanding payment in respect of the Final Bill, the Contractor shall be and remain liable in terms of Clause 8.5. and shall be entitled to receive the unadjusted balance of the Security Deposit remaining in the hands of the Owner in terms of Clause 9.9.2 hereof.

9.9 Final Certificate :

- 9.9.1 On satisfactory completion of the liability in terms of Clause 8.5. and where applicable of the obligations in terms of Clause 8.2.8, and all other obligations under the contract, the Contractor may apply to the Engineer-in-Charge for the issue of a Final Certificate. After due satisfaction, the Engineer-in-Charge shall issue a Final Certificate to the Contractor with respect to the performance of the contract by the contractor. Such Final Certificate may be with or without conditions.
- 9.9.2 On satisfactory completion of all obligations under the contract, the Contractor may apply to the Engineer-in-Charge for refund of Security Deposit, and in such event the Owner shall pay / refund to the Contractor the unadjusted balance (if any) of the Security Deposit for the time being remaining in the hands of the Owner. On such payment / refund, or on intimation to the Contractor that the nothing out of the Security Deposit remains to be repaid / refunded, the Owner shall stand discharged of all obligations and liabilities under the Contract.

SECTION – 10

TAXES, LABOUR LAWS AND INSURANCE

10.1 Taxes :

The Contractor shall be exclusively liable for the payment of any and all taxes, duties and levies now or hereafter imposed, increased or modified in respect of any work done and / or materials supplied and for the payment of all contributions and taxes for unemployment compensations, insurance and old age pension and annuity now or hereinafter imposed by the Central or any State Government or authority with respect to or covered by the wages, salaries or other compensations paid to persons employed or engaged by the Contractor and doth hereby undertake to indemnify and keep indemnified the Owner from and against the same and all claims, actions, demands and payments whatsoever against the Owner howsoever arising therefrom or in connection therewith.

10.2 Government Regulations :

The Contractor shall comply with and ensure strict compliance by his / its sub-contractors, servants and agents of all applicable Central, State, Municipal and local laws and regulations of any Central, State or local bodies and authorities and undertakes to indemnify the Owner from and against all levies, damages, penalties, any payments whatsoever as may be imposed by reason of any such breach or violation of any law, rule or regulation whatsoever and all actions, claims and demands arising therefrom and / or relative thereto.

10.3 Labour Laws and Regulations :

10.3.1 The Contractor shall be responsible for strict compliance of and shall ensure strict compliance by its sub-contractors, servants and agents of all labour and other laws, rules or regulations having the force of law affecting the performance of the Work or the relationship of employer and employee between the Contractor / sub-contractors and their respective employees.

10.3.2 The Contractor shall ensure that wages are paid by himself or by his sub-contractors to their workmen directly without the intervention of any Jamadars or Thekedars and that no amount by way of commission or otherwise is deducted or recovered by the Jamadars from the wages of the workmen. It is agreed and understood that the wages paid or payable by the Contractor or his sub-contractor is not below the minimum wages as applicable from time to time and the Owner shall not be liable to bear any part of the increase, if any, in the minimum wages during the term of the contract.

- 10.3.3 The Owner shall be entitled at all times to carry out any check(s) or inspection(s) of the Contractor's facilities, records and accounts, which are situated within Owner's premises, to ensure that the provisions of the Labour Laws and Regulations are being observed by the Contractor and that the workmen are not denied the rights and benefits to which they are entitled under such provisions. Any violation shall, without prejudice to any other rights or remedies available to the Owner, constitute a ground for termination of the Contract as though specifically set forth under Clause 11.1.1 thereof.
- 10.3.4 Contractor enters into this Agreement as, and shall continue to be, an independent contractor. The parties agree that no employment relationship, partnership, joint venture or other association shall be deemed created by this Agreement. Under no circumstances shall the Contractor look to the Owner as his employer, or as a partner, agent, or principal. Contractor or his sub-contractor, employees / workers of either, shall not be entitled to any benefits accorded to the Owner's employees including, without limitation, worker's compensation, disability insurance, leave or sick pay. Nothing in the Contract Documents shall be construed or treated as making the workmen / employees of the Contractor or any sub-contractor, as or to be workman / employee of the Owner, or place obligation or liability in respect of any such workmen / employees upon the Owner.
- 10.3.5 The Contractor shall indemnify and keep indemnified the Owner from and against all actions, claims, demands and liabilities whatsoever under and in respect of the breach of any of the provisions of Clauses 10.3.1 and 10.3.2, and / or against any claim, action or demand by any workman / employee of the Contractor or any sub-contractor, and / or from any liability under any law, rules or regulations having the force of law relative to the contract, including but not limited to claims against the Owner under the Workmen's Compensations Act, 1923, the Employees Provident Funds Act, 1952, Employees State Insurance Act and / or The Contract Labour (Abolition & Regulation) Act, 1970.
- 10.3.6 Owner reserves the right to deduct or withhold any amount to the extent necessary or required to ensure compliance of any Act or rules or other applicable statutory provisions as in force from time to time. The same shall be recovered from bills payable to the Contractor as debt recoverable.

10.3.7 Compliance of ESI and EPF Acts

10.3.7.1 The Contractor agrees to cover all employees engaged by or through Sub-Contractors under ESI as well as EPF Acts as per provisions of Acts and shall submit necessary records and returns in proof of compliance of these statutory enactments.

Contractor further agrees to defend, indemnify and hold the OWNER harmless from any liability or penalty which may be imposed by the Central, State, Local or other statutory authority for any alleged violation of labour enactments or other enactments, by the Contractor or his Sub-Contractor.

10.3.7.2 In the event that the OWNER is required under law to remit or otherwise the Owner remits the contributions on behalf of the Contractor or sub-contractor to the concerned authorities under the ESI and EPF Acts and Rules, on a month to month basis or otherwise, then upon such remittance, the OWNER shall have the right to recover the amounts so remitted from the running account bills / any amount payable by the OWNER to the Contractor.

10.4 Safety Regulations, Accident and Damage :

10.4.1 The Contractor shall be responsible at his own cost and so far as it relates to the performance of the Work, to observe and to ensure observance by his sub-contractors, agents and servants of the applicable provisions of the Safety Code as hereinafter appearing including all fire, safety and security regulations as may be prescribed by the Owner from time to time as also such other reasonable precautions and measures as appear necessary. The Contractor shall, at his cost, employ / deploy equipment as necessary to protect all works, materials, properties, structures, equipment, installations, communications and facilities whatsoever from damage, loss or other hazard whatsoever (including but not limited to fire and explosion) and shall during construction / operations minimise the disturbance and inconvenience to the Owner, other contractors, the public and the adjoining land and property owners and occupiers, and crops, trees and vegetation. It is agreed and understood that the Contractor shall indemnify and keep indemnified the Owner from and against all claims, losses and damages resulting directly or indirectly from any breach by the Contractor of his obligations aforesaid or owing to negligence or want of due care on the part of the Contractor. For the purposes of this Clause the expression Contractor shall include the sub-contractor(s) or agent(s) or servant(s) of the Contractor.

10.4.2 The Contractor's liabilities under Clause 10.4.1 and otherwise under the Contract shall remain unimpaired notwithstanding the existence of any other indemnity or insurance covering any risk, claim, damage, loss or liability for which the Contractor is liable to the Owner and in respect of which Clause 10.4.1 applied. The Owner, at his option, shall be entitled to take recourse to any one or more of the indemnities or remedies available under the Contract.

10.5 Indemnity and Insurance :

10.5.1 The Contractor shall at all times indemnify and keep indemnified the Owner and its officers, servants and agents from and against all third party claims whatsoever [including those related to property loss and damage, personal accident, personal injury or death of any sub contractor and / or the servants or agents of the Contractor, any sub-contractor(s) and / or the Owner] relating to or respecting the Work and the Contractor shall at his own cost and initiative at all times upto the successful conclusion of the defect liability period specified in Clause 8.5.1 hereof take out and maintain insurance policies with insurance company(ies) approved by the Owner, in respect of all insurable liabilities under this clause, in particular those under the Motor Vehicles Act, Workmen's Compensation Act, Fatal Accident Act, Personnel Injuries Insurance Act, Emergency Risk Insurance Act, and / or other Industrial Legislation from time to time in force in India.

10.5.2 If it comes to the notice of the Owner that the Contractor has omitted or failed to take out and / or maintain insurance policies as provided for in the foregoing sub-clause, the Owner shall be entitled (but without obligation to do so) to take out and / or maintain such insurance policies, at the cost and expense of the Contractor, and without prejudice to any other rights or remedies of the Owner in this behalf. The Owner shall be entitled to recover, by deduction or adjustment, the sum(s) incurred in this regard from the dues to the Contractor.

10.5.3 The Contractor shall keep the Owner indemnified from and against all personal and third party claims of whatsoever nature (inclusive of all litigation costs and Counsel fees) arising out of any act or omission attributable to the Contractor or any sub-contractor including any sub-contractor or agent, sub-agent, consultant or employee of the Contractor or any sub-contractor, whether arising within or outside the scope of the contract, sub-contract, agency or employment, as the case may be.

10.6 Training of Apprentices :

The Contractor shall, if and when called upon by the Engineer-in-Charge during the term of the contract, engage and / or cause to be engaged by his sub-contractor(s), such number of apprentices and for such period as may be required by the Engineer-in-Charge in this behalf. Such apprentices shall be engaged / trained in accordance with the provisions of the Apprentices Act, 1961 and other applicable statutory provisions. The Contractor shall be responsible for fulfilling all obligations of the employer under the said Act, including liability for payment to apprentices and the contractor shall not be entitled to any extra compensation or remuneration from the Owner in this regard.

10.7 Patent and Royalties :

The Contractor represents and warrants that all the work to be performed / delivered by Contractor under this Agreement will not violate or in any way infringe any patent or other intellectual property rights of any third party. Wherever necessary, the Contractor undertakes to secure at their own expense, appropriate license or other user rights with respect to any aspect of the Work which is the subject of intellectual property rights of any third party. Contractor shall indemnify and hold harmless (including payment of reasonable attorney's fees) the Owner and its directors, officers, employees and agents (each of the foregoing being referred to individually as an "Indemnified Party") for any claim, loss or liability to third parties (other than such claim, loss or liability solely the fault of the Indemnified Party) arising from or in connection with the Contractor's breach of this Clause. In the event of any claim for royalty or license fee for the use of any patent or other IPR, the Contractor alone shall be liable to make such payments.

10.8 Articles of Value Found:

All gold, silver and other metals, minerals or ore of any kind or description and all precious and semi-precious stones and bearing earth, rock or strata, coins, treasures, treasure trove, antiques and other items and things whatsoever which shall be found under or upon the job site shall as between the Contractor and the Owner be the exclusive property of the Owner and the Contractor shall forthwith upon discovery thereof notify the Owner of such discovery with the details of the item(s) or things discovered and pending directions by the Owner for the disposal thereof shall hold and preserve the same as trustee of the Owner to the satisfaction of the Engineer-in-Charge.

10.9 Material Obtained from Dismantling :

Any Material obtained by the Contractor consequent upon dismantling of any building, structure or construction whatsoever at the job site other than any building, structure or construction dismantled by the Contractor pursuant to the Contractor's liabilities for defects as elsewhere herein provided, shall be the exclusive property of the Owner.

10.10 Lien and Liabilities :

If at anytime there is evidence of any lien or claim for which the Owner might be or become liable and which in terms of the Contract or otherwise is chargeable to or payable by the Contractor, the Owner shall have the right to retain out of any payment then due or thereafter becoming due to the Contractor an amount sufficient to completely indemnify the Owner against such lien or claim, and should the Contractor not dispute such lien or claim and / or if in the opinion of the Owner such lien or claim is otherwise valid (the Owner's opinion in this behalf being final and binding on the Contractor), the Owner may pay and discharge the same and deduct the amount so paid together with any legal and other costs, charges and expenses incurred by the Owner in defending any action and / or in obtaining legal advice or opinion relative to the lien, claim or action, from any monies then due or thereafter becoming due to the Contractor and / or retained as aforesaid, and if there is no money due or retained as aforesaid or if the same be insufficient to satisfy the payment(s) aforesaid, the Contractor shall on demand pay to the Owner the same and failing such payment within 10 (ten) days of demand by the Owner in his behalf, shall be liable to pay interest on the amount due from the date of demand upto and until the date of payment in full at the bank rate as applicable to the Owner Plus 1% (one percent) per annum.

10.11 Collection of Indebtedness :

Without prejudice to any other rights or remedies of the Owner and in addition to any other provisions thereof, the Owner shall be entitled (1) to deduct out of the Security Deposit and / or any monies of the Contractor for the time being in the hands of the Owner , or (2) to withhold any monies becoming due to the Contractor, any and all amounts due to the Owner from the Contractor arising out or in connection with the Contract.

10.12 Liabilities for Sub-Contractor(s) :

Without prejudice to any other liabilities or obligations of the Contractor relative to sub-contractors in terms hereof or otherwise, the Contractor shall require every sub-contractor to whom any portion of the work to be performed under the Contract has

been sub-contracted, to comply with the provision of the Contract insofar as applicable to the respective sub-contractor, and the Contractor shall hold the Owner harmless and indemnified from any and against all penalties, action, claims and demands and costs, charges and expenses whatsoever arising out of or occasioned by failure of the Contractor or any sub-contractor(s) to make full and proper compliance with any of the terms and conditions of the Contract.

10.13 Waiver :

It shall be permissible for the Owner by a written communication to the Contractor, to waive in whole or in part, (1) any stipulation / requirement to be fulfilled by the Contractor, or (2) the enforcement of any right or remedy, which the Owner may have against the Contractor, or of any obligation which the Contractor may have herein; PROVIDED ALWAYS that,

- i) No waiver shall be presumed or inferred unless made in a written communication addressed by the Owner to the Contractor and specifically communicated as a Waiver;
- ii) No waiver of any right or part of any right on one occasion shall be deemed to be a waiver or abandonment of that right for all occasions with the intent that a waiver once given shall be limited to the specific waiver and shall be without prejudice to the right of the Owner to insist upon the strict adherence of the attendant obligations of the Contractor and / or the future enforcement of the right by the Owner in respect of the same and / or any other dependent obligation.

SECTION – 11

TERMINATION

11.1 Right of Owner to Terminate Contract :

11.1.1 Notwithstanding anything elsewhere herein provided and in addition to any other right or remedy of the Owner under the Contract or otherwise (including the right of the Owner to recover from the Contractor agreed liquidated damages for delay in completion of the works within the provision of 7.4.8 hereof), the Owner shall be entitled to terminate the Contract by a written Termination Notice at any time during its currency on the occurrence of any of the following event(s) contingencies, subject to a cure period of 10 days from the date of receipt of a notice in this regard, namely,

- i) Default or failure on the part of the Contractor to perform any of the obligations of the Contractor under the Contract, including but not limited to ;
 - a) Failure to start the work within 10 (ten) days of handing over the job site to the Contractor, and in the event of more than one job site being involved, failure to start the work at all the job sites involved, within 10 (ten) days of handing over of the concerned job site to the Contractor,
 - b) Failure to commence any work at any job site in accordance with the time prescribed in this behalf in the Progress Schedule,
 - c) Failure to execute the works in conformity with the Progress Schedule,
 - d) Failure to provide at each job site sufficient labour, material, equipment, machinery, temporary work and / or facilities required for the proper and / or due execution of the work or any part thereof,
 - e) Negligence in carrying out the works or unsatisfactory execution of the work,
 - f) Abandonment of the work or any part thereof,
 - g) Suspension of the Work for a continuous period of 14 (fourteen) days without the prior consent of the Engineer-in-Charge,

- h) Any breach of the terms and conditions of the Contract by the Contractor or his sub-contractor, agent or employee,
 - i) Failure to deposit the Initial Security Deposit within 10 (ten) days in terms of Clause 4.2.1,
 - j) Failure to execute the Contract Agreement in specified Form of Agreement within 10 (ten) days in terms of Clause 2.22.
- ii) If there is any material change in the constitution of the Contractor (if a firm, or corporate entity), or in the circumstances or organization of the contractor, which is detrimental to the interests of the Owner.
 - iii) Dissolution of the Contractor (if a firm) or commencement of liquidation or winding-up (whether voluntary or compulsory) of the Contractor (if a company) or appointment of a receiver or manager of any of the contractor's assets and / or insolvency of the Contractor (if a sole proprietorship or of any partner of the Contractor (if a firm).
 - iv) Distress, execution or other legal process being levied on or upon any of the Contractor's goods and / or assets.
 - v) Death of Contractor (if an individual).
 - vi) If the Contractor or any person employed by him shall make or offer for any purpose connected with the Contract any gift, gratuity, royalty, commission, gratification or other inducement (whether money or in any other form) to any employee or agent of the Owner.
 - vii) If the Contractor shall assign his interest or any part thereof in the Contract.

11.1.2 The decision of the OWNER as to whether any of the events / contingencies mentioned in Clause 11.1.1 hereof entitling the Owner to terminate the Contract, has occurred or noted shall be final and binding upon the Contractor.

11.1.3 The Termination Notice shall set forth, in addition to a statement of the reason or reasons for terminating the Contract, the time(s) and place(s) for conducting a survey and measurement of the work performed under the Contract upto the date of termination for the purpose of determining the amount(s) due to the Contractor. The reason(s) for the termination stated in the Termination Notice, shall be final and binding upon the Contractor.

11.2 Settlement upon Termination :

- 11.2.1 For the purpose of measurements, the provisions of Clause 9.2.1 to 9.2.6 shall apply. Only completed items of the work shall be reckoned for the purpose of measurements and the decision of the Engineer-in-Charge as to whether or not any works have been completed for the purpose of measurement shall be final and binding upon the Contractor. Incomplete items of works shall be measured only on the basis of materials supplied, and decision of the Engineer-in-Charge as to the quantity of material involved in or relative to any incomplete works shall be final and binding upon the Contractor.
- 11.2.2 For the purpose of determining the amount due to the Contractor in respect of the work [items of work or the total Work], the provisions of Clauses 9.3.1, 9.3.2 and 9.3.3 shall apply, and the measurements taken shall for the purpose of such accounting be deemed to be final measurements and the bill prepared by the Contractor on such basis, shall be treated to be the Final Bill.
- 11.2.3 Within 7 (seven) days of completion of the measurements, the Contractor shall clear the job site of all scaffolding, wiring, pipes, surplus materials, Contractor's labour, equipment and machinery and shall demolish, dismantle and remove all Contractor's site offices and quarters, and other temporary works, structures and construction and other items and things whatsoever brought upon or erected at the job site or on any land allotted to the Contractor by the Owner and not incorporated in the permanent works and shall remove all rubbish from the job site and the land allotted to Contractor and shall clear, level and dress the job site and said land to the satisfaction of the Engineer-in-charge and shall put the Owner in custody and possession of the job site and all land allotted by the Owner to the Contractor.
- 11.2.4 Should the Contractor fail to comply with provisions of Clause 11.2.3 in the manner and within the time specified therein, the Owner shall have the right at the risk and cost of the Contractor in all respects to clear the job site of all scaffolding, wiring, pipes, surplus materials, contractor's labour, equipment and machinery and other materials and things and / or demolish / dismantle and remove all Contractor's site offices and quarters and other temporary works, constructions and erections whatsoever on or at the job site or on any land allotted to the Contractor by the Owner and / or remove all rubbish from a job site, the land allotted to the Contractor and store, sell, dispose of and / or otherwise deal with any and all material, equipment and machinery, etc., and other items and things aforesaid and recoveries of any demolition / dismantling as the Owner shall in its absolute discretion deem fit, and the Contractor shall forthwith on demand pay the Owner the entirety of the cost / expenses of the Owner relative to the above together with 15% (fifteen per cent) thereof to cover Owner's supervision, with right in the Owner (without prejudice to any other mode of recovery), to recover the

same from the proceeds of any sale or disposal as aforesaid or any monies of the Contractor held by the Owner or dues of the Contractor AND for the purposes of exercising the powers under this sub-Clause, the Contractor DOTH HEREBY irrevocably nominate, constitute and appoint the Owner [with right to the Owner to delegate any and all of its rights in terms hereof to such of its officer(s) and / or other person(s) as it shall deem fit] for and on behalf of and as attorney of the Contractor to do, commit and sign all acts, deeds, matters and things as shall or may be necessary to be done, committed and / or signed by the Owner to put into effect the provision of this clause with full right to enter into arrangements with third parties for or relative to the storage, sale and / or other disposal of any material, equipment and machinery, etc., and other items and things and to enter into or upon any of the Contractor's premises and to break open if necessary any locks, bolts, fasteners, bonds or other devices restricting entry thereto and generally to do all other acts, deeds, matters and things as shall be necessary to give full effect to the provision of this clause, PROVIDED ALWAYS that,

- i) The Owner shall be entitled, without prejudice to the foregoing and in addition thereto, upon the Contractor failing to comply with the provisions of Clause 11.2.3 after removing / demolishing / dismantling from the job site or land allotted to the Contractor, any of the Contractor's scaffolding, wiring, pipes, materials, temporary works and other items and things, by written notice to the Contractor, to require the Contractor to remove or take delivery of, lift and / or clear the same within 7 (seven) days (or such other period as may be specified in said notice) of date of receipt of the notice. If the contractor omits or fails to so remove or take delivery etc., it shall be permissible for the Owner to abandon the Contractor's items at the risk and cost of the Contractor, whereupon (without prejudice to any other rights of the Owner) the Owner shall stand absolutely discharged and absolved in respect of any demand or claim with respect to all such Contractor's property.
 - ii) Nothing herein stated shall make or constitute the Owner as a trustee or bailee of the Contractor's property referred to in clause 11.2.3, nor shall the Owner be bound in law or fact by any duty of care in respect thereof, with the intent that all actions, dealings and disposals within the provisions of this clause shall be exclusively at the risk and liability of the Contractor (including relative to any loss or damage) and the Owner shall not be howsoever responsible, accountable or liable in respect thereof.
- 11.2.5 If any cause (including but not limited to resistance put up by the Contractor and / or his servants or agent or any court order consequent upon a suit or proceedings filed by the Contractor) the Owner is unable to fully take over possession of the entire works at any or all job sites within 7 (seven) days from the date of completion of the measurements and contemplated above, the Owner shall, in addition to all amounts, compensations and / or damages recoverable from the Contractor in terms hereof)

including but not limited to Owner's entitlements under Clause 7.4.8 and Clause 11.2.7 hereof or otherwise, be entitled to recover from the Contractor liquidated damages in the amount equivalent to 1% (one per cent) of the Total Contract Value specified in the Acceptance of Tender for each week or part thereof that the said taking over of possession at any job site is delayed beyond the period of seven days specified above, without any limitation as to quantum or percentage of such damages.

- 11.2.6 Notwithstanding anything provided in Clause 11.2.4 the Owner shall have the right at any time prior to the removal of the same from the job site, to take possession of such of the Contractor's materials at any and all job sites as the Owner shall deem fit, and the Contractor shall be entitled to compensation for any such material taken over as for surpluses.
- 11.2.7 Upon termination of the Contract, the Owner shall be entitled at the risk and expense of Contractor by itself or through any independent Contractor(s) or partly by itself and / or partly through independent Contractor(s) to complete the execution of the Work as contemplated in the scope of the Work in terms of the Contract Agreement and to recover from the Contractor in addition to any other amounts, (including compensation within the provisions of Clause 7.4.8. and Clause 11.2.5 hereof) the difference between the amounts as would have been payable to the Contractor in respect of the work (calculated as provided for in Clause 9.3.1 hereof read with the associated provisions thereunder) and Clause 9.4.1 hereof and the amount actually expended by the Owner for completion of the entire work as aforesaid together with 15% (fifteen per cent) thereof to cover Owner's supervision charges, and in the event of the latter being in the excess of the former, the Owner shall be entitled (without prejudice to any other mode of recovery available to the Owner) to recover the excess from the security deposit or any monies due to the Contractor.
- 11.2.8 No amount shall be due and payable to the Contractor upon or in the event of termination of the Contract unless and until the entirety of the works as contemplated in the scope of work shall have been completed in all respect to the satisfaction of the Owner and following such completion the defect liability period in respect thereof as herein otherwise provided for has expired and all payments finally due on any account to the Owner and / or other Contractor(s) in respect of the balance works have been finally settled and the Owner has been discharged from all liabilities in respect thereof.
- 11.2.9 If upon the satisfaction of the provisions of Clauses 11.2.7 and 11.2.8 hereof, there shall remain in the hands of the Owner any excess / balance after all accounting and adjustment of all dues from Contractor to the Owner, the Owner shall forthwith pay over the excess / balance to the Contractor and in the event of the Security Deposit and other dues of Contractor in the hands of the Owner being insufficient to meet the dues of the Owner, the Contractor shall forthwith on demand by the Owner pay the Owner the shortfall.

Section -12

ARBITRATION

12.1 Settlement of disputes between two PSUs or between a PSU and Govt. Department :

In the event of any disputes or differences relating to the interpretation and application of the provisions of the Contract, such disputes or differences shall be referred by either party to the Arbitration of one of the Arbitrators in the Departments of Public Enterprises (DPE) to be nominated by the Secretary to the Government of India in charge of the Bureau of Public Enterprises.

The Arbitration and Conciliation Act, 1996 or any statutory modification or re-enactment thereof shall not be applicable to the arbitration under this clause.

The award of the Arbitrator shall be binding upon the parties to the dispute, provided, however, any party aggrieved by such award may make a further reference for setting aside or revision of the award to the Law Secretary, Department of Legal Affairs, Ministry of Law and Justice, Government of India. Upon such reference the dispute shall be decided by the Law Secretary, or the Special / Additional Secretary when so authorized by the Law Secretary, whose decision shall bind the parties finally and conclusively.

The parties to the dispute will share equally the cost of arbitration as intimated by the "Arbitrator".

Arbitrator shall give a speaking award.

12.2 Settlement of disputes with other than PSUs and Govt. Departments :

Any dispute arising out of or relating to this Agreement, or the breach or validity thereof, shall be finally settled by arbitration in accordance with the Arbitration and Conciliation Act, 1996 (the "Act") by a sole arbitrator to be appointed by the Managing Director of the Owner in the manner herein below stated. The Party requiring that the dispute be referred to arbitration shall do so by a written notification to the other Party with a copy to the Managing Director of the Owner. Within 30 days of receipt of such notification, the Managing Director of the Owner shall notify to both parties the name and address of three individuals who are not connected with the Owner, for appointment as the sole

arbitrator. Within 10 days of receipt of such notification, the Party other than the Owner shall select one out of the three individuals and communicate such person's name to the Owner and the Managing Director of the Owner. On receipt of such communication, the Managing Director of the Owner shall forthwith appoint the individual so selected as the sole arbitrator; provided that in the event the Party other than the Owner, refuses or omits to so communicate within the said 10 days, the Managing Director of the Owner shall forthwith appoint anyone out of the three individuals as the sole arbitrator. The arbitration shall be held at Chennai and the arbitration proceedings shall be conducted, and the award shall be rendered, in English. The award shall state the reasons upon which it is based. The arbitrator shall render the award within six months of the commencement of arbitral proceedings, which period may be enlarged by consent of both Parties. The costs of the arbitration proceedings shall be borne equally by the two parties. Interest, if awarded by the arbitrators, shall be at a rate not exceeding the Cash Credit Rate prevailing on the date of the award. This Agreement, and the rights and obligations of the Parties, shall remain in full force and effect pending the award in any arbitration proceedings. For the purposes of this clause, the term 'dispute' shall include a demand or difference of any kind whatsoever, arising out of this Agreement and respecting the performance thereof, whether during the Term of this Agreement including extensions if any, or after completion, and whether before or after termination, abandonment or breach of the Agreement.

SECTION – 13

SAFETY REGULATIONS

13.1 General :

- 13.1.1 The Contractor's employees and labour, engaged in the performance of the Work , shall adhere to safe construction practice and guard against hazardous or unsafe working conditions and shall comply with the Owner's Safety Rules as set forth herein. The safety rules specified herein are in addition to and not in substitution of the applicable provisions of the Factories Act, 1948, The Contract Labour Act 1970, and other statutory provisions, which in all cases shall apply.
- 13.1.2 The Contractor shall not be entitled to any extra or additional payment or other compensation for the compliance with all applicable safety rules.
- 13.1.3 The requirement to comply with all applicable safety rules shall not entitle or justify the Contractor to demand or claim any time or cost overrun.
- 13.1.4 Contractor shall post a qualified and experienced 'Safety Manager' and provide Safety Engineers / Officers / Supervisors in every shift, to exclusively oversee and ensure compliance with all applicable safety rules.
- 13.1.5 It shall be the responsibility of the Contractor to keep those engaged in the Work duly and promptly informed of any patent and latent dangers at the work sites. The Contractor shall undertake safety talks with his staff and labourers each day before the commencement of the work and outline dangers on site.
- 13.1.6 The Contractors shall not employ minors (persons below the age of 18 years). Also, the women workers shall not be engaged in hazardous areas. Notwithstanding the requirement under any applicable law, the Owner or the Engineer-in-charge, may at any time require the Contractor to subject any contract workman, to a medical examination, generally or in relation to specific jobs such as in canteen, tank cleaning, etc.
- 13.1.7 Contractors are prohibited from using Cellular phones within the Refinery premises, except to the extent permitted by the Owner by special or general order / instruction.

13.2 First Aid and Industrial Injuries :

- 13.2.1 Contractor shall ensure maintenance of first aid facilities for his employees and those of his sub-contractors. However, if practicable and available, emergency first-aid treatment may be obtained from Owner's First Aid Center / Emergency Care Center.
- 13.2.2 Contractor shall make his own arrangements for the transportation and treatment of his employees and those of his sub-contractors suffering injuries. Name and telephone numbers of those providing such services shall be prominently displayed in Contractor's Site Office.
- 13.2.3 All cases of personal injury sustained by the Contractor's personnel within the premises of the Owner shall be promptly reported in writing to the Engineer-in-charge / Emergency Care Center / Owner's Safety Department, if occurring during normal working hours and to the Shift Manager or Emergency Care Center of the Owner if occurring at other times.
- 13.2.4 The Contractor shall be solely responsible for any and all liability under the Workmen's Compensation Act, and other applicable laws with respect to all those engaged by the Contractor or any sub-contractor.
- 13.2.5 All and every accident or incident involving the personnel, vehicles or machinery of the Contractor or any sub-contractor, shall be duly reported to the Owner promptly.

13.3 Carrying Match Boxes / Lighters and Smoking :

Carrying / Striking of matches, lighters inside the Owner's premises or smoking within the refinery, tank farm or dyke limits are strictly prohibited. Owner's regulatory officials shall be entitled to forthwith remove, using force if necessary, anyone violating the 'No Smoking' and other fire safety rules.

13.4 Work Permits :

- 13.4.1 Contractor shall obtain the necessary entry permits for all his labour before commencing the job and abide by the instructions in this regard.
- 13.4.2 Contractor shall obtain necessary permits for hot work, cold work and excavation jobs as may be directed by the Engineer-in-charge from time to time.

- 13.4.3 Safety measures stipulated in the respective Work Permits shall be strictly complied at all times when within the premises of the Owner.
- 13.4.4 Owner reserves the right to cancel a work permit without assigning reasons. When called upon to stop the work by the Engineer-in-charge, the Contractor shall immediately cease to continue the work. Before re-commencement, fresh work permit must be obtained.
- 13.4.5 Contractor's personnel shall abide by the applicable instructions as may be issued from time to time to handle any emergent situations, such as explosion, fire, terrorist attacks, major accident, etc. In the event of such emergencies, the Contractor's personnel shall stop their work and proceed to a safe designated place assembly point in the area of their work and inform the Engineer-in-Charge immediately. If needed, they shall be safely evacuated.

13.5 Entry Pass for Men and Machinery :

- 13.5.1 Contractor shall arrange to apply for and secure valid gate passes for the entry and exit of his men, materials and equipment, including those of the sub-contractors, from the concerned authorities of the Owner.

13.6 Owner's Fire Fighting Facilities :

- 13.6.1 Fire hydrant water shall never be used by the Contractor, directly or indirectly, for any purpose other than putting out any fire, unless otherwise permitted by the Engineer-in-charge.
- 13.6.2 Contractor or their workmen shall not remove the fire hose / extinguishers from their locations under any circumstances.

13.7 Operation of Vehicles :

- 13.7.1 The Contractor shall ensure that all State traffic rules and regulations are complied with when Motor Vehicles are driven inside the Refinery / Project premises. In addition, the following shall also be complied with by the Contractor's personnel ;
- 13.7.2 Speed Limit within the Refinery / Project premises, as stipulated by the Owner shall be strictly adhered to. Unless otherwise specified the speed limit shall be 25 K.M. per hour.

- 13.7.3 Vehicles driven inside the Owner's premises shall be serviceable and roadworthy and shall have CCE approved spark arrestors.
- 13.7.4 Vehicle drivers shall always check over-head and side clearance while driving vehicles. Hanging of loads on the sides or at the rear is prohibited.
- 13.7.5 Vehicles shall be parked only in designated areas. No vehicle shall be parked opposite fire hydrants or at the intersection of roads or within 10 meters of any road corner or in front of the Fire Station.
- 13.7.6 No Contractor's material should be spread or stacked on any of the roads, unless it is in the performance of the Work.
- 13.7.7 The Work shall, as far as is practicable, be carried out by the Contractor so as not to interfere with the normal activities of the Owner and the normal use of all facilities in the Owner's premises.
- 13.7.8 Vehicles such as tractors, cranes or forklifts shall not be used to transport people.

13.8 Contractors Barricades :

- 13.8.1 Contractor shall erect and maintain suitable barricades to guard or protect :
 - a) Excavations, demolitions
 - b) Hoisting areas
 - c) Areas adjudged hazardous by Contractor's or Owner's inspectors
 - d) Owner's existing property liable to damage by Contractor's operations, in the opinion of the Engineer-in-charge
 - e) Railroad unloading spots.
- 13.8.2 Contractor's employees and those of its Sub-contractors shall become acquainted with Owner's barricading practice and shall respect the provisions thereof.
- 13.8.3 Barricades and hazardous areas situated in passages, pathways, or roads and in areas adjacent thereto shall be conspicuously indicated including by red flasher lanterns at night.

13.9 Scaffolding :

- 13.9.1 Suitable scaffolding should be provided for workmen for all works that cannot safely be done from the ground or from solid construction except such short period work as can be done safely from ladders. When a ladder is used, an extra mazdoor shall be engaged for holding the ladder and if the ladder is used for carrying materials as well, suitable footholds and handholds shall be given in inclination not steeper than 1 in 4 (1 horizontal and 4 vertical).
- 13.9.2 All scaffolding material used shall be as per relevant IS specifications and tested periodically as per statutory requirements.
- 13.9.3 Scaffolding or staging more than 12 meters above the ground or floor, swing or suspended from an overhead support or erected with stationery support shall have a guard rail properly attached, bolted, braced and otherwise guarded at least 1 meter above the floor or platform of such scaffolding or staging and extending along the entire length of the outside and ends thereof with only such openings as may be necessary for the delivery of materials. Such scaffolding or staging shall be so fastened as to prevent from swaying from the building or structure.
- 13.9.4 Working platform, gangways and stairways should be so constructed that they should not sag unduly or unequally and if the height of the platform or the gangway or the stairway is more than 12 meters above ground level or floor level, they should be closely guarded, should have adequate width and should be suitably fastened as described in clause 13.9.3 above.
- 13.9.5 Any opening in the floor of a building or in working platform be provided with suitable means to prevent the fall of persons or materials by providing suitable grills, fencing or railing having a minimum height of 1 meter.
- 13.9.6 Safe means of access shall be provided to all working platforms and other working places. Every ladder shall be securely fixed. No portable single ladder shall be over 900 cms. in length, while the width between the side rails in rung ladder shall in no case be less than 30 cms. for ladder upto and including 300 cms. in length. For longer ladders, this width should be increased at least 6 mm for each additional foot of length. Uniform step spacing shall not exceed 30 cms. Adequate precautions shall be taken to prevent danger from electrical equipment. No materials on any of the sites of work shall be so stacked or placed as to cause danger or inconvenience to any person or public. Contractor shall also provide all necessary fencing and lights to protect the workers and staff from accidents, and shall be bound to bear the expenses of defence of every suit, action or other proceedings, as law that may be brought by any

person for injury sustained owing to the neglect of the above precautions and to pay any damages and costs which may be awarded in any such suit or action or proceedings to any such persons or which may be with the consent of the Contractor be paid to compromise any claim by any such person.

- 13.9.7 Scaffolding must be inspected and certified fit by the Contractor's Safety Manager weekly or more frequently in the event of adverse weather. Such inspections shall be recorded.

13.10 Excavation and Trenching :

- 13.10.1 All trenches 1.2 meters or more in depth, shall at all times be supplied with at least one ladder for each span of 30 meters length.

- 13.10.2 Ladder shall be extended from bottom of the trench to at least 100 cms. above the surface of the ground. The site of the trenches which are 152 cms. or more in depth shall be stepped back to give suitable slope or securely held by timber bracing, so as to avoid the danger of sides to collapse. The excavated material shall not be placed within 152 cms. of the edge of the trench or half of the trench depth whichever is more. Cutting shall be done from top to bottom. Under no circumstances undermining or under cutting be done.

13.11 Demolition :

Immediately prior to the commencement of any demolition work and also during the process of demolition the following additional precautionary steps shall be observed.

- 13.11.1 All roads and open areas adjacent to the particular site shall either be closed or suitably controlled.
- 13.11.2 All underground / overground power / telephone cables or water / sewerage lines in the vicinity of the particular site shall be either suitably diverted or made non-functional for the duration of the demolition activity.
- 13.11.3 All practical steps shall be taken to prevent danger to persons employed from risk of fire or explosion or flooding. No floor, roof or other part of the building shall be overloaded with debris or materials as to render it unsafe.

13.12 Safety Equipment :

- 13.12.1 The Contractor shall ensure ready availability at the respective work site of necessary personal protective equipment for use by persons employed at the site and such equipment shall be maintained in a condition suitable for immediate use. The Contractor shall ensure proper use of such equipment by those concerned. Contractor shall use material handling equipment and tools such as chain pulley blocks, wire ropes, lifting machines etc. and scaffolding materials only if they are duly certified as per statutory requirements.
- 13.12.2 Workers engaged in mixing asphaltic materials, cement and lime mortar shall wear protective footwear and protective gloves.
- 13.12.3 Workers engaged in white washing and mixing or stacking of cement bags or any materials which are injurious to eyes shall be provided with protective goggles / dust masks.
- 13.12.4 Those engaged in welding and cutting works, shall be provided with protective face and eye-shields, hand gloves, apron etc.
- 13.12.5 Stone breakers shall be provided with protective goggles and protective clothing and located at safe intervals.
- 13.12.6 When workers are required to work in sewers and manholes, which are in use, the Contractor shall ensure that the manhole covers are opened and ventilated at least for an hour before the workers are allowed to get into manholes and the manholes so opened shall be cordoned off with suitable railing and provided with warning signals or boards to prevent accidents.

13.13 Risky Places :

- 13.13.1 If there is risk of drowning or such like danger at or near the work site, adequate safety equipment shall be positioned at such site(s) in ready-to-use condition. Steps necessary for prompt rescue of any person in danger shall be taken.
- 13.13.2 When work is required to be performed in areas where H₂S / CO gas is likely to be present, the Contractor should ensure with the Permit Issuing Authority on the total gas free atmosphere. Care should be exercised when work in a contaminated area upto the Threshold Limit Value (TLV) is undertaken, by wearing a Self Contained Breathing Apparatus (SCBA) or using a Blow Man Apparatus. Such work should not be performed by a single worker and should always be done under close supervision.

13.14 Hoisting Equipment :

- 13.14.1 All hoisting machines and tackles including their attachments, anchorage and supports shall be as per relevant IS specifications, standards and tested / inspected periodically by the concerned competent authorities. Necessary records / certificates etc., in this regard shall be maintained as per statutory requirements.
- 13.14.2 These shall be of good mechanical construction, sound materials, and adequate strength and free from patent defect and shall be kept in good repair and in good working order.
- 13.14.3 Ropes used in hoisting or lowering materials or as a means of suspension shall be of durable quality, of adequate strength and free from defects.
- 13.14.4 Every crane driver or hoisting appliance operator shall be properly qualified. No person under the age of 21 years shall be in charge of any hoisting machine including any scaffolding winch or for giving signals to the operator.
- 13.14.5 In case of every hoisting machine and of every chain ring hook, shackle swivel and pulley block used in hoisting or lowering or as means of suspension, the safe working load shall be ascertained by appropriate means. Every hoisting machine and all gear referred to above shall be prominently marked to show the safe working load. In case of a hoisting machine having a variable safe working load, each safe working load and the respective conditions under which it is applicable shall be clearly indicated. No part of any machine or any gear shall be loaded beyond the safe working load except for the purpose of testing.
- 13.14.6 In respect of machines made available by the Owner, the safe working load shall be notified by the Engineer-in-charge. As regards Contractor's machines, the contractor shall notify the safe working load of the machine to the Engineer-in-charge, whenever he brings any machinery to site of work and cause it to be verified by the Engineer-in-charge.
- 13.14.7 Hoisting appliances should be provided with such means as will reduce to the minimum, any risk of accidental descent of the load.
- 13.14.8 Adequate precautions should be taken to avoid the risk of any part of a suspended load becoming accidentally displaced.

13.15 Electrical Equipment :

13.15.1 The Contractor shall deploy a competent Engineer / Electrician to attend to electrical matters. All temporary power supply boards shall conform to IE Regulations.

13.15.2 Motors, Gearing, Transmission, Electric wiring and other dangerous parts of hoisting appliances should be provided with efficient safeguards.

13.15.3 When workers are employed on electrical installations which are already energised, insulating mats, wearing apparel, such as gloves, sleeves and boots as may be necessary, shall be provided. The workers should not wear any metallic rings, watches, keys or other materials which are conductors of electricity.

13.15.4 The work area shall always be kept accessible for switching off power supply in case of emergency. Before leaving the work place, the Contractor shall ensure power supply is switched off properly. For this purpose a record shall be maintained of the last person leaving the concerned work site on all days of activity.

13.16 Maintenance of Safety Devices :

All scaffolds, ladders and other safety devices mentioned or described herein shall be maintained in safe conditions and no scaffold, ladder or equipment shall be altered or removed while it is in use. Adequate washing facilities should be provided at or near places of work.

13.17 Display of Safety Instructions :

13.17.1 The Contractor shall display a 'Safety Policy' at a prominent place at his site office and each work spot.

13.17.2 The safety provisions covered herein should be brought to the notice of all concerned by display on a notice board at a prominent place at the work spot(s).

13.18 Personal Conduct :

13.18.1 Gambling, fooling on the work, horseplay, mock fighting or fighting is strictly forbidden in the Refinery premises / Project area.

13.18.2 Entering the Refinery premises / Project area under the influence of alcohol / narcotics or its possession is strictly forbidden.

13.18.3 Entering the Refinery premises / Project area with weapons such as knives, gun etc. is prohibited.

13.19 Housekeeping :

13.19.1 Good housekeeping must be practised by the Contractor's personnel at all times while within the Owner's premises. During and after completion of work, they are to ensure that their work area is kept clean and tidy.

13.19.2 Records of routine housekeeping inspection shall be maintained.

13.19.3 Materials and equipment should be stored in a safe and orderly manner so that they will not block exits to roads, buildings, aisles, passages and approach to fire fighting equipment such as fire hydrants, fire hoses, fire extinguishers or areas where emergency safety showers, electrical switch panels and switch rooms are located.

13.20 Enforcement of Safety Regulations :

13.20.1 To ensure effective enforcement of the rules and regulations relating to safety precautions, the arrangements made by the Contractor shall be open to inspection by the Engineer-in-Charge or Safety Engineer of the Owner or their representatives.

13.20.2 Contractors and their supervisory staff shall undergo a one-day training programme annually by CPCL on Safe Working Practices in the Refinery Premises so as to familiarize themselves with the safety rules, regulations and practices. Contractor shall be in possession of valid safety training badge while working in the Refinery premises.

SECTION – 14

GENERAL

14.1 PERSONAL ACTS AND LIABILITIES :

- 14.1.1 No Director, officer or other employee of the Owner shall be personally bound or liable to the Contractor for or in respect of any obligation, default or omission directly or indirectly relative to the Contract.
- 14.1.2 The Contractor shall not under any circumstances remit, pay or advance to any officer(s), servant(s) or agent(s) of the Owner any amount on any account without prior written authorisation of the Owner.
- 14.1.3 Any money paid to any partner of the Contractor (if a firm) and any receipt, settlement, acknowledgement of liability or other documents whatsoever signed by any one of the partners of the firm or erstwhile partner of the firm (without notice of the cessation of his interest) or any person held out to be a partner of the firm shall be binding upon the Contractor vis-a-vis the Owner and shall constitute a full release and discharge to the Owner and / or valid settlement, acknowledgement or obligation upon the Contractor, as the case may be, and the Owner shall not be concerned, with the application of any monies so paid or the authority of the concerned partner (or erstwhile or purported partner) vis-a-vis the other partners to make the settlement, receipt, acknowledgement or other document(s) concerned provided always that the owner shall be entitled at its discretion at any time to call upon all the partners of the Contractor firm to sign any receipt, settlement, acknowledgement or other document(s) including any receipt, settlement, acknowledgement or other document signed by a partner (or erstwhile or purported partner) as aforesaid, and all the partners of the firm shall, when called upon to do so by the Owner forthwith sign the receipt, order acknowledgement or other document required to be so signed.

SECTION – 15

APPENDICES

APPENDIX No.	PROFORMA
I	Submission of Tender
II	Information of Tenderer
II A	Declaration of Black Listing / Holiday Listing
III	Details of Past Experience
IV	Details of Equipment Proposed to be used for the Tendered Work
V	Details of Concurrent Commitments
VI	Bank Guarantee for Earnest Money Deposit
VII	Agreement
VIII	Bank Guarantee for Initial Security Deposit
IX	Bank Guarantee for Security Deposit
X	Indenture for Secured Advance
XI	Indemnity Bond

APPENDIX – I

PROFORMA FOR SUBMISSION OF TENDER

(To be filled up by the tenderer and issued in their letter head)

Ref. :

Date :

From

.....
.....
.....

To

Chennai Petroleum Corporation Limited,
[Refer Note 1 for Full Address]

1. Having examined the Tender Documents consisting of the Notice / Letter Inviting Tenders, Instruction to Bidders, General Conditions of Contract, Special Conditions of Contract, Standards and Specifications, Plans and Drawings, Time Schedule, Proforma for agreement, Form of Schedule of Rates and Addendum / Addenda to the Tender Documents in connection with the [Name of Work] for Chennai Petroleum Corporation Limited, [Refer Note 1 for Full Address] and having understood the provisions of the said Tender Documents and having thoroughly studied the requirements of Chennai Petroleum Corporation Limited relative to the work tendered for and having conducted a thorough study of the job site(s) involved, the site conditions, soil conditions, climatic conditions, labour, power, water, material and equipment availability, transport and communication facility, availability and suitability of borrow areas, availability of right of way and temporary office accommodation and all other facilities and things whatsoever necessary for the performance of the work, I / We submit our tender offer for the performance of the proposed work in accordance with the terms and conditions and within the time mentioned in the Tender Documents at the rates quoted by me / us in the accompanying Schedule of Rates based on the Form of Schedule(s) of Rates included within the Tender Documents and arrived at a Total Contract Value of Rs..... (Rupees only) based on an application of the rates tendered in the accompanying Schedule(s) of Rates to the relative quantities indicated in the Form of Schedule(s) of Rates forming part of the Tender Documents.

2. If the work or any part thereof is awarded to me / us, I / We undertake to perform the work in accordance with the Contract Documents as defined in the Proforma of Agreement forming part of the Tender Documents and accept the terms and conditions of the contract as laid down therein and undertake within 10 (Ten) days of receipt of Acceptance of Tender to pay to and / or deposit with Chennai Petroleum Corporation Limited a sum which together with the amount of Earnest Money deposited by me / us in terms hereof, shall make 2 ½% (Two and one-half percent) of the Total Contract Value as specified in the Acceptance of Tender for the purpose of Security Deposit, by any one or more modes of payments specified in this behalf in the General Conditions of Contract and to commence work as each job site(s) involved within 10 (Ten) days of handing over the job site or any part thereof to me / us, and to sign the formal contract in terms of the Proforma for agreement forming part of the Tender Documents within 10 (Ten) days of receipt of Letter of Acceptance from and on behalf of Chennai Petroleum Corporation Limited in this behalf failing which Chennai Petroleum Corporation Limited shall be at liberty without further reference to me / us and without prejudice to any of its rights or remedies, to terminate the contract and / or to forfeit the earnest money deposited in terms hereof.
3. I / We hereby further undertake to keep my / our tender offer valid for a period of not less than 4 (Four) months from the scheduled date of opening of tenders as specified in the Instructions to Bidders forming part of the Tender Documents.
4. I / We hereby further state that I / We / none of us (in the case of partnership firm) was / were employed as Directors of Chennai Petroleum Corporation Limited during the 2 (Two) years immediately preceding the date hereof

(OR)

I / We hereby declare that I / Shri., one of our partner (in the case of partnership firm) was employed as a Director of Chennai Petroleum Corporation Limited during the of 2 (Two) years immediately preceding the date hereof and that I / Shri..... have / has obtained previous permission of Chennai Petroleum Corporation Limited to make this tender.

5. I / We have annexed to this tender the following documents [*Tenderers to list down the documents*] in accordance with the Instructions to Bidders, Clause No. 2.4.

I / We hereby undertake that the statements made herein / information given in the Annexures referred to above are true in all respects and that in the event of any such statement or information being found to be incorrect in any particular, the same may be construed to be a misrepresentation entitling Chennai Petroleum Corporation Limited to avoid any resultant contract.

6. I / We further undertake as and when called upon by Chennai Petroleum Corporation Limited to produce for its inspection original(s) of the document(s) of which copies have been annexed hereto.
7. I / We confirm having deposited / enclosed Earnest Money of Rs..... (Rupees) as detailed hereunder [*Strike off whichever is not applicable*] :
- a) Demand Draft No..... dated drawn on [Name of Bank and Branch] attached hereto.
- b) Bank Guarantee No. dated Issued by[Name of Bank and Branch] attached hereto.

Yours truly,

Signature of Tenderer with seal

Name :

Designation :

Address :

Witness (Signature)

Name :

Address :

Occupation :

Tenderers to Note :

1. *The full address of Chennai Petroleum Corporation Limited's job site shall be either Manali, Chennai – 600 068 or Panangudi, Nagapattinam – 611 002, or any other place as indicated in the NIT / LIT.*

APPENDIX – II

INFORMATION ABOUT TENDERER

A. In case of Individual :

- i) Name of business
- ii) Whether his business is registered
- iii) Date of commencement of business
- iv) Whether he pays Income Tax over Rs. 10,000 per year
- v) Whether he is a Director or is related to any Director of Owner, present or retired within the past two years
- vi) Whether he has been banned / de-listed by any Government Department / Quasi-Government / Public Sector Undertaking. If so, give details.

B. In case of Partnership :

- i) Names of partners
- ii) Whether the partnership is registered
- iii) Date of establishment of firm
- iv) If each of the partners of the firm pays income Tax over Rs. 10,000 a year and if not, which of them pays the same
- v) Whether any partner or member of the firm is a Director or is related to any Director of Owner, present or retired within the past two years
- vi) Whether the firm has been banned / de-listed by any Government Department / Quasi-Government / Public Sector Undertaking. If so, give details.

C. In the case of Limited Company or Company Limited by Guarantees :

- i) Amount of paid-up capital
- ii) Name of Directors
- iii) Date of Registration of Company
- iv) Copies of the balance sheet of the company of the last two years
- v) Whether any Director of the Company is a Director or is related to any Director of Owner, present or retired within the past two years
- vi) Whether the company has been banned / de-listed by any Government Department / Quasi-Government / Public Sector Undertaking. If so, give details.

Signature of Tenderer with seal :

Name and Address of Tenderer :

APPENDIX – II A

PROFORMA OF DECLARATION OF BLACK LISTING / HOLIDAY LISTING

A. In the case of a Proprietary Concern :

I hereby declare that neither I in my personal name or in the name of my Proprietary concern M/s. _____ which is submitting the accompanying Bid / Tender nor any other concern in which I am proprietor nor any partnership firm in which I am involved as a Managing Partner have been placed on black list or holiday list declared by any Government Department/ Quasi-Government / Public Sector Undertaking or its Administrative Ministry (presently the Ministry of Petroleum & Natural Gas), except as indicated below:

(Here give particulars of blacklisting or holiday listing and in the absence thereof state “NIL”)

B. In the case of a Partnership Firm :

We hereby declare that neither we, M/s. _____, submitting the accompanying Bid / Tender nor any partner involved in the management of the said firm either in his individual capacity or as proprietor or managing partner of any firm or concern have or has been placed on blacklist or holiday list declared by any Government Department / Quasi-Government / Public Sector Undertaking or its Administrative Ministry (presently the Ministry of Petroleum & Natural Gas), except as indicated below:

(Here give particulars of blacklisting or holiday listing and in the absence thereof state “NIL”)

C. In the case of a Company :

We hereby declare that we have not been placed on any holiday list or black list declared by any Government Department / Quasi-Government / Public Sector Undertaking or its Administrative Ministry (presently the Ministry of Petroleum & Natural Gas), except as indicated below:

(Here give particulars of blacklisting or holiday listing and in the absence thereof state “NIL”)

It is understood that if this declaration is found to be false in any particular, Chennai Petroleum Corporation Limited or its Administrative Ministry, shall have the right to reject my / our bid, and if the bid has resulted in a contract, the contract is liable to be terminated.

Place :

Signature of Bidder :

Date :

Name of Signatory :

APPENDIX – III

DETAILS OF PAST EXPERIENCE

I / We have completed the following similar works during the past 5 years :

Sl. No.	Full Particulars of Similar work carried out by tenderer	Name, address of client including contact person's Name, Phone / Fax No.	Year of Completion	Contractual completion Period (Months)	Actual Completion Period (Months)	Total Contract Value

Signature of Tenderer with seal :

Name and Address of Tenderer :

APPENDIX – V

DETAILS OF CONCURRENT COMMITMENTS

I / We furnish below the details of the works currently being executed by me / us :

Sl. No.	Full particulars of similiar work carried out by tenderer	Name, address of client and contact person	Total Contract Value	Contractual Completion period (Months)	Actual Completion Period (Months)	Expected Date of Completion	Current Progress (Percentage)

Signature of Tenderer with seal :

Name and Address of Tenderer :

APPENDIX – VI

PROFORMA OF BANK GUARANTEE FOR EARNEST MONEY DEPOSIT

(on Non-judicial Stamp Paper of Value Rs.....)

To

CHENNAI PETROLEUM CORPORATION LIMITED

[Refer Note 1 for Full Address]

Registered Office :

536, Anna Salai, Teynampet,

Chennai – 600 018, INDIA

Messrsare giving tender for the work offor the Chennai Petroleum Corporation, Manali, Chennai / Panangudi, Nagapattinam.

The General Tender Notice provides that the tenderer shall along with his tender pay a sum of Rs. (Rs.) as earnest money deposit, in the form therein mentioned. The form of payment of earnest money includes guarantee executed by a scheduled bank, undertaking full responsibility to indemnify Chennai Petroleum Corporation Limited in case of default. The said has approached us and at their request and in consideration of the premiseshaving our office athave agreed to give such guarantee as hereinafter mentioned.

1. Wehereby agree with you that if default shall be made by Messrsin observing or performing any of the terms and conditions of the tender, given by them or in payment of any money payable to you under the terms of the tender, we shall, on demand, pay to you in such manner as you may direct, the said amount of Rs(Rupees only) or such portion thereof not exceeding the said sum as you may from time to time require.

2. You will have the full liberty without reference to us and without affecting this guarantee, to postpone for any time or from time to time the exercise of any of the powers and rights conferred on you under the tender given by the saidand to enforce or to forbear from enforcing any powers or rights or by reason of time being given to the saidwhich under law relating to the sureties would but for the provision have the effect of relating us.

3. Your right to recover the said sum of Rs.(Rupees.only) from us in the manner aforesaid will not be affected or suspended by reason of fact that any dispute or disputes have been raised by the said Messrsand / or that any dispute or disputes are pending before any Officer, tribunal or court.

4. The guarantee herein contained shall not be determined or affected by the liquidation or winding up, dissolution or change of constitution or insolvency of the saidbut shall in all respects and for all purposes be binding and operative until payment of all monies, due to you in respect of such liability or liabilities is made.

5. Notwithstanding anything contained herein :

- a) Our liability under this bank guarantee shall not exceed Rs. (Rupees only)
- b) This guarantee shall be valid upto and
- c) We are liable to pay the guaranteed amount or any part thereof under the bank guarantee only and only if you serve upon us a written claim or demand on or before

6. We have power to issue this guarantee in your favour under our Memorandum and Articles of Association and the undersigned has full power to do the Power of Attorney datedgranted to him by the Bank.

Dated at day of

Yours faithfully,

..... Bank, by its
Constituted Attorney

Signature of a person duly authorised
to sign on behalf of the bank

Tenderers to Note :

1. *The full address of Chennai Petroleum Corporation Limited's job site shall be either Manali, Chennai – 600 068 or Panangudi, Nagapattinam – 611 002, or any other place as indicated in the Special Conditions of Contract.*
2. *The tenderer should insert the amount of guarantee in words and figures. This figure should be the same as indicated in the Notice / Letter Inviting Tenders.*

APPENDIX – VII

PROFORMA OF AGREEMENT

CONTRACT AGREEMENT NUMBER DATED DAY OF 20..... Two Thousand and between Messrs..... a Company incorporated under the Indian Companies Act, and having its registered office at in the town of hereinafter called the “CONTRACTOR” (Which term shall unless excluded by or repugnant to the subject of context) include its successors and permitted assignees) of the one part and the Chennai Petroleum Corporation Limited , hereinafter called “OWNER” (which term shall, unless excluded by or repugnant to the subject or context include its successors and assignees), of the other part.

Whereas:

A. The Owner being desirous of having provided and executed certain works mentioned, enumerated or referred to in the tender documents including Short Tender Notice, General Tender Notice, General Conditions of Contract, Special Conditions of Contract, Specifications, Drawings, Plans, time Schedule of completion of jobs, Agreed Variations and other documents etc., has called for Tender for the work of

B. The Contractor has inspected the site and the surroundings of the works specified in the tender documents and has satisfied himself by careful examination before submitting his tender as to the nature of the surface strata, soil, sub-soil and ground, the form and nature of site and local conditions, the quantities, nature and magnitude of the work, the availability of labour and materials necessary for the execution of the work, the means of access to site, the supply of power and water thereof and the accommodation he may require and has made local and independent enquiries and obtained complete information as to the matters and thin as referred to or implied in the tender documents or having any connection therewith, and has considered the nature and extent of all probable and possible situations, delays hindrances or interferences to or with execution and completion of the work to be carried out under the Contract and has examined and considered all other matters, conditions and things probable and possible contingencies, and generally all matters incidental thereto and ancillary thereof affecting the execution and completion of the work and which may have influenced him in making his tender.

C. The offer made by the Contractor datedin response to Owner’s Tender Notice datedand the letter of acceptance of the said offer of the Contractor by the Owner by letter Nodatedand the document containing the agreed variations are attached to this Agreement and they form an integral part of this Agreement.

And whereas the Owner accepted the tender of the Contractor for the provision and the execution of the said work at the rates stated in the Schedule of Quantities of works and finally approved by the

Owner (hereinafter called the 'Schedule of Rates') upon the terms and subject to the conditions of Contract: -

Now THIS AGREEMENT WITNESSETH and it is hereby agreed and declared as follows:

1 . In consideration of the payment to be made to the contractor for the work to be executed by him the Contractor hereby covenants with the Owner that the Contractor shall and will duly provide, execute and complete the said works and shall do and perform all other acts and things and in the Contract mentioned or described or explained which are to be implied therefrom or may reasonably necessary for the completion of the said works and at the times and in the manner and subject to the terms and conditions of stipulations mentioned in the Contract.

2. In consideration of the due provision, execution and completion of the said works, the Owner does hereby agree with Contractor that the Owner will pay to the Contractor the respective amounts for the work actually done by him and approved by the Owner at the Schedule of Rates and such other sum payable to the Contractor under the provision of the Contract, such payment to be made at such time and in such manner provided for in the Contract.

and

3. In consideration of the due provision, execution and completion of the said works, the Contractor does hereby agree to pay such sums as may be due to the Owner for the Service rendered by the Owner to the Contractor, such as power supply, water supply and others as set forth in the said contract and such other sums as may become payable to the Owner towards the controlled items of consumable materials or towards loss, damage to the Owner's Refinery Equipment, Materials, Construction Plant and Machinery, such payment to be made such time and in such manner as provided in the Contract.

IN WITNESS whereof the parties have executed these present in triplicate the day and the year first above written.

Signed and delivered for and on behalf of

In the case of partnership, to be signed by all partners or by one partner holding a General Power of Attorney.

At

In the presence of
(Two Witnesses)

Signed and delivered for and on behalf of
Chennai Petroleum Corporation Limited

In the presence of (Two Witnesses)

APPENDIX - VIII

PROFORMA OF BANK GUARANTEE FOR INITIAL SECURITY DEPOSIT

Chennai Petroleum Corporation Limited,

Tender No. :

Dear Sirs,

In consideration of Chennai Petroleum Corporation Limited (hereinafter called 'the Corporation' which expression shall include its successors and assigns) having awarded certain work for and relative to "

....." (Name of the work) to M/s

..... (Name and address of the

Contractor) (hereinafter called the 'Contractor' which expression shall include its successors)

upon certain terms and conditions interalia mentioned in the Corporation's Letter of Acceptance

No. dated read with the relative Tender Documents

(hereinafter collectively called 'the Contract', which expression shall include any formal contract

entered into between the Corporation and the Contractor in supercession of the said Letter of

Acceptance and all amendments and / or modifications in the contract) inclusive of the condition

that the Corporation may accept a Bank Guarantee / Undertaking of a Scheduled Bank in India

in lieu of Cash Deposit of the Initial Security Deposit as provided for in clause 4.2 of the General

Conditions of Contract forming part of the said Tender Documents.

We, (Name of the Bank) a body registered / constituted

under the having registered and Head Office at

..... (hereinafter called 'the Bank')

at the request of the Contractor and with the intent to bind the Bank and its successors and

permitted assigns, do hereby unconditionally and irrevocably Guarantee / Undertake payment

to Chennai Petroleum Corporation Limited of the unpaid balance of the Initial Security Deposit

up to an aggregate limit of Rs..... (Rupees

.....only).

AND the Bank doth hereby further agree as follows :

- i. The Guarantee / Undertaking herein contained shall remain in full force and effect during the period that would be taken for the performance of the said Contract and for the claims of the Corporation relative thereto to be satisfied and / or discharged and until the Corporation accordingly discharge this Guarantee / Undertaking subject, however, that the Corporation shall have no claims under this Guarantee / Undertaking after the midnight of unless a notice of the claims under this Guarantee / Undertaking has been served on the Bank before the expiry of the said date.

- ii. The Corporation shall have the fullest liberty without reference to the Bank and without affecting in any way the liability of the Bank under this Guarantee / Undertaking, at any time and / or at any of the terms and conditions thereof or relative to the said Initial Security Deposit or to extent time of performance of the said Contract in whole or part or to postpone for any time and / or from time to time any of the obligations of the Contractor and / or the powers or remedies exercisable by the Corporation against the Contractor and either to enforce or forbear from enforcing any of the terms and conditions of / or governing the said Contract or the said Initial Security Deposit or the securities available to the Corporation or any of them and the Bank shall not be released from its liability under these presents and the liability of the Bank shall remain in full force and effect notwithstanding any exercise by the Corporation of the liberty with reference to any or all the matters aforesaid or by reason of time being given to the Contractor or any other forbearance, act or omission on the part of the Contractor or of any indulgence by the Corporation to the Contractor or of any other act, matter or thing whatsoever which under the law relating to sureties could have the effect of releasing the Bank from its liability hereunder or any part thereof.
- iii. It shall not be necessary for the Corporation to proceed against the Contractor before proceeding against the Bank and the Guarantee / Undertaking herein contained shall be enforceable against the Bank notwithstanding the existence of any other undertaking or security for any indebtedness of the Contractor to the Corporation (including relative to the said Initial Security Deposit) and notwithstanding that any such Undertaking or security shall at the time when claim is made against the Bank or proceeding taken against the Bank hereunder, be outstanding or unrealised.
- iv. The amount stated by the Corporation in any demand, claim or notice as the unpaid balance of the said Initial Security Deposit for the time being shall as between the Bank and the Corporation for the purposes of these present be conclusive of the said balance.
- v. The liability of the Bank to the Corporation under this Guarantee / Undertaking shall remain in full force and effect notwithstanding the existence of any difference or dispute between the Contractor and the Corporation, the Contractor and the Bank and / or the Bank and the Corporation or otherwise howsoever touching or affecting these presents or the liability of the Contractor to the Corporation, and notwithstanding the existence of any instructions or purported instructions by the Contractor or any other person on the Bank not to pay or for any cause withhold or defer payment to the Corporation under these presents, with the intent that notwithstanding the existence of such difference dispute or instruction, the Bank shall be and remain liable to make payment to the Corporation in terms hereof.

- vi. The Bank shall not revoke this Guarantee / Undertaking during its currency except with the previous consent of the Corporation in writing and also agrees that any change in the constitution of the Contractor or the Bank or the Corporation shall not discharge the Bank's liability hereunder.

- vii. Notwithstanding anything contained herein above, our liability under this guarantee shall be limited to a sum of Rs..... (Rupees only) unless a demand or claim under this guarantee is made on us in writing on or before , we shall be discharged from all liabilities under this guarantee thereafter.

- viii. The Bank doth hereby declare that Shri (Name of the person signing on behalf of the Bank) who is (his Designation) is authorised to sign this Guarantee / Undertaking on behalf of the Bank and to bind the Bank thereby.

Dated the day of 20.....

Yours faithfully,

For

Signature :

Name and designation :

Name of the Branch :

Address :

APPENDIX – IX

PROFORMA OF BANK GUARANTEE FOR SECURITY DEPOSIT

1. In consideration of Messrs. Chennai Petroleum Corporation Limited, (hereinafter called the “the Owner”) having agreed to exempt M/s..... (herein after called “the said Contractor(s) from the demand, under the terms and Conditions of work order / agreement dated made between M/s. Chennai Petroleum Corporation Limited and M/sfor(hereinafter called “ the said work order / agreement), of security deposit for the due fulfillment by the said contractor(s) of the terms and conditions contained in the said work order agreement, on production of a Bank Guarantee for Rs. (Rupees only). We (indicate the name of bank) (hereinafter referred to as “ the Bank “), at the request of contractor(s) do hereby undertake to pay to the Owner an amount not exceeding Rs..... (Rupees only) against any loss or damage caused to or suffered or would be caused to or suffered by the Owner by reason of any breach by the said contractor(s) of any of the terms or conditions contained in the said work order / agreement.

2. We, do hereby undertake to pay the amounts due and payable (indicate the name of the bank) under this guarantee without any demur, merely on a demand from the Owner stating that the amount claimed is due by way of loss or damage caused to or would be caused to or suffered by the Owner by reason of breach by the said contractor(s) failure to perform the said work order / agreement. Any such demand made on the bank shall be conclusive as regards the amount due and payable by the bank under this guarantee. However, our liability under this guarantee shall be restricted to an amount not exceeding Rs. (Rupees only)

3. We undertake to pay the Owner any money so demanded notwithstanding any dispute or disputes raised by the contractor(s) supplier(s) in any suit or proceeding pending before any Court or Tribunal relating thereto. Our liability under this present being absolute and unequivocal.

The Payments so made by us under this bond shall be a valid discharge of our liability for payment thereunder and the contractor(s) / supplier(s) shall have no claims against us for making such payment.

4. We(indicate the name of the Bank) 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 work order / agreement and that it shall continue to be enforceable till all the dues of the Owner under or by virtue of the said work order

/ agreement have been fully paid and its claims satisfied or discharged or till the Owner certifies that terms and conditions of the said work order have been fully and properly carried out by the said contractor(s) and accordingly discharges this guarantee. Unless a demand or claim under this guarantee is made on us in writing on or before we shall be discharged from all liability under this guarantee thereafter.

5. We.....(indicate the name of the Bank) further agree with the Owner that the Owner shall have the fullest liberty without our consent and without affecting in any manner our obligations hereunder to vary terms and conditions of the said work order / agreement or to extend time of performance by the said contractor(s) from time or to postpone for any time or from time to time any of the powers exercisable by the Owner against the said contractor(s) and to forbear or enforce any of the terms and conditions relating to the said work order / 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 thing whatsoever which under the law relating to sureties would, but for this provision, have effect of so relieving us.

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

7. We (indicate the name of the Bank) lastly undertake not to revoke this guarantee during its currency except with the previous consent of the Owner in writing.

8. Notwithstanding anything contained hereinabove, our liability under this guarantee is restricted to Rs. (Rupees only) and this guarantee is valid upto and we shall be released and discharged from all the liabilities hereunder unless a written claim for payment under this guarantee is lodged on us on or before irrespective of whether or not the original guarantee is returned to us.

Dated the day of 20.....

For
(indicate the name of the bank)

APPENDIX – X

PROFORMA OF INDENTURE FOR SECURED ADVANCE

This Indenture made the.....day of 20 between (hereinafter called the Contractor which expression shall where the context so admits or implies be deemed to include his executors, administrators and the assigns) of the one part and Chennai Petroleum Corporation Limited (herein after called the Owner , which expression shall where the context so admits or implies be deemed to include its successors in office and assigns) of the other part.

WHEREAS by an agreement No. dated(hereinafter called the said agreement) the contractor has agreed and WHEREAS the Contractor has applied to the Chennai Petroleum Corporation Limited that he may be allowed advance on the security of materials absolutely belonging to him and brought by him to site of the works, the subject of the said agreement for use in the construction of such of the works as he has undertaken to execute at rates fixed for the finished work (inclusive of the cost of materials and labour and other charges) and whereas the Chennai Petroleum Corporation Limited has agreed to advance to the Contractor an amount up to Rs.....(Rupees only) on the security of the quantities and other particulars of the materials on the security of which the advance or advances are made as detailed in the secured advance account forming part of the running account bill referred from time to time and signed by the Contractor for the said works.

NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration of amounts aggregating to the sum of Rs(Rupeesonly) on or after the execution of these present paid to the Contractor by the Chennai Petroleum Corporation Limited (The receipt whereof the Contractor hereby acknowledge) Contractor both hereby covenant and agree with the Chennai Petroleum Corporation Limited and declare as follows:

1. That the said sum aggregating to Rs..... (Rupees..... only) so advanced by the Chennai Petroleum Corporation Limited to Contractor as aforesaid shall be employed by the Contractor in or towards expediting the execution of the said works and for no other purposes whatsoever.

2. That the materials detailed in the said Running Account Bills which have been offered to and accepted by the Chennai Petroleum Corporation Limited as Security are absolutely the Contractor's own property, and free from encumbrances of any kinds and the Contractor will not make any application for or receive a further advance on the security of materials which are not absolutely his own property and free from encumbrances of any kind and the contractor hereby agrees to indemnify the Chennai Petroleum Corporation Limited against all claims to any materials in respect of which an advance has been made to him as aforesaid.

3. That the materials detailed in the said Running Account Bills (hereinafter called the said materials) shall be used by the Contractor solely for the execution of the said works in accordance with the direction of the Engineer-in-Charge in terms of the said agreement.
4. That the Contractor shall make at his own cost all necessary and adequate arrangement for the proper watch, safe custody and protection against all risk of the said materials and that until used in construction as aforesaid the said materials shall remain at the site of the said works in the Contractor's custody and on his own responsibility and shall at all times be open to inspection. In the event of the said materials or any part thereof being stolen, destroyed or damaged the Contractor will forthwith replace the same with other materials of like quality or repair and make good the same as required by the Engineer-in-charge.
5. That the said materials shall not on any account be removed from the site of the said works except with the written permission of the Engineer-in-Charge or an officer authorised by him on that behalf.
6. That the advance shall be repayable in full when or before the Contractor receives payment from the CHENNAI PETROLEUM CORPORATION LIMITED of the price payable to him for the said works under the terms and the provisions of the said agreement provided that if any intermediate payments are made to the Contractor on account of the work done then on the occasion of each such payment the Chennai Petroleum Corporation Limited will be at liberty to make recovery from the Contractor's bill for such payment by deduction there from the value of the said materials then actually used in the construction and in respect of which recovery has not been made previously the value for this purpose being determined in respect of each description of materials at the rates at which the amount of the advances made under these presents were calculated.
7. That if the contractor shall at any time make any default in the performance or observance in any of the term and provisions of the said agreement the total amount of the advances or advance that he may still be owing to the Chennai Petroleum Corporation Limited together with the interest thereon at twelve percent per annum from the date or respective dates of such advance or advances to the dates of payment with all costs, charges, damages and expenses incurred by the Chennai Petroleum Corporation Limited in the recovery thereof or the enforcement of the security or otherwise by reason of the default of the Contractor shall become payable by the Contractor hereby covenants and agrees with the Chennai Petroleum Corporation Limited to repay the same respectively to him accordingly.
8. The Contractor hereby gives charge of all the said materials for the repayment to the Chennai Petroleum Corporation Limited of the said sum aggregating to Rs. (Rupeesonly) and all costs, charges, damages and expenses payable under the agreement and without prejudice to the powers contained therein if and whenever the money owing shall not be paid in accordance herewith the Chennai Petroleum Corporation Limited may at any time thereafter adopt all or any of the following courses as he may deem best:-

- (a) Seize and utilise said materials or any part thereof in the completion of the said works on behalf of the Contractor in accordance with the provisions in this behalf contained in the said agreement debiting the contractor with the actual cost of effecting such completion and the amount due in respect of advance under these presents and crediting the Contractor with the value of work done as if he had carried it out in accordance with said agreement and the rate thereby provided if the balance is against the contractor he is to pay the same to Chennai Petroleum Corporation Limited on demand.
- (b) Remove and sell by the public auction the seized materials or only part thereof and out of the money arising from the sales retain all the sums aforesaid repayable to the Chennai Petroleum Corporation Limited under these presents and pay over the surplus (if any) to the Contractor.
- (c) Deduct all or any part of the money owing out of the security deposits or any sum due to the contractor under said agreement.

9. That in the event of any conflict between the provisions of these presents and the said agreements provisions of the said agreements shall prevail and in the event of any dispute or difference arising the construction or effect of these presents the settlement of which has not been hereinbefore expressly provided for, the same shall be referred to arbitration as provided in the said agreement.

IN WITNESS WHEREOF..... and Chennai Petroleum Corporation Limited by the order and under the directions of Chennai Petroleum Corporation Limited have herein to set their respective hands the day and year first above written.

Signed, sealed and delivered
by the said Contractor
in the presence of witness

Signature :
Name :
Address :

Witness (1)

(2)

Signed by the Order and direction of
the Chennai Petroleum Corporation Limited
in the Presence of Witness

Signature :
Name :
Address :

Witness (1)

(2)

APPENDIX – XI

PROFORMA OF INDEMNITY BOND

WHEREAS M/s.....(hereinafter called the contractor) have entered into a contract Nodatedwith CHENNAI PETROLEUM CORPORATION LIMITED (hereinafter called the company) for the work of.....

WHEREAS the said contract agreement provides for an indemnity Bond to be given by the contractor for the supply by the company to the contractor for.....

WHEREAS the company has now issued and the contractor has now received valued at Rsas in the Schedule hereunder.

WHEREAS the contractor has agreed to keep the..... in its safe custody and use them or cause them to be used exclusively for the work specified in the said contract agreement.

Wehereby indemnify and keep indemnified M/s. Chennai Petroleum Corporation Limited harmless against loss of or damage to the and consequential loss arising out of such loss or damage received by us and mentioned in the Schedule hereunder, to the extent of Rs.....

This Indemnity Bond shall not be discharged and continues to be valid and enforceable until the said contract agreement Nodatedis duly performed by the contractor in accordance with the terms and conditions thereof.

SCHEDULE

SPECIFICATION AND QUANTITIES OF.....

RECEIVED BY THE CONTRACTOR.

SIGNATURE

DATED :

PLACE :

WITNESSES:

1

2.