

General Conditions of Contract(GCC)

1. General

1.1 Tenets of Interpretation

Unless where the context requires otherwise, throughout the contract:

- 1) The heading of these conditions shall not affect the interpretation or construction thereof.
- 2) Writing or written includes matter either whole or in part, in digital communications, manuscript, typewritten, lithographed, cyclostyled, photographed, or printed under or over signature or seal or digitally acceptable authentication, as the case may be.
- 3) Words in the singular include the plural and vice-versa.
- 4) Words importing the masculine gender shall be taken to include other genders, and words importing persons shall include any company or association or body of individuals, whether incorporated or not.
- 5) Terms and expression not herein defined shall have the meanings assigned to them in the contract Act, 1872 (as amended) or the Sale of Goods Act, 1930 (as amended) or the General Clauses Act, 1897 (as amended) or of INCOTERMS, (current edition published by the International Chamber of Commerce, Paris) as the case may be.
- 6) Any reference to 'Goods' shall be deemed to include the incidental Works/ Services also.
- 7) Any generic reference to GCC shall also imply a reference to SCC as well.
- 8) In case of conflict, provisions of SCC shall prevail over those in GCC.
- 9) Any reference to 'Contract' shall be deemed to include all other documents (inter-alia GCC, SCC) as described in GCC-clause 2.5.
- 10) Any reference to any legal Act, Government Policies or orders shall be deemed to include all amendments to such instruments, from time to time, till date.
- 11) GCC-clause 5.10 (Book Examination clause), GCC-clause 6.5 (Option Quantity clause), GCC-clause 10.1.6 (Fall clause) shall not apply unless invoked explicitly in the contract. Nevertheless, Fall Clause (GCC-clause 10.1.6) shall be expressly applicable in the case of Rate Contract (Refer SCC-clause 6.8).

1.2 Definitions

In the contract, unless the context otherwise requires:

- 1) "Agent" is a person employed to do any act for another or represent another in dealings with a third person. In the context of public procurement, an Agent is a representative participating in the Tender Process or Execution of a Contract for and on behalf of its principals.
- 2) "Allied Firm" are all business entities that are within the 'controlling ownership interest'(ownership of or entitlement to more than twenty-five percent of the company's shares or capital or profits) or 'control'(including the right to appoint a majority of the directors or to control the management or policy decisions including by virtue of their shareholding or management rights or shareholder agreements or voting agreements) of the

principal firm acting alone or together or through one or more juridical persons. All successor firms or assigns of the principal firm shall be considered allied firms.

- 3) "bid" (including the term 'tender', 'offer', 'quotation' or 'proposal' in specific contexts) means an offer to supply goods, services or execution of works made as per the terms and conditions set out in a document inviting such offers.
- 4) "Bidder" (including the term 'Bidder', 'consultant' or 'service provider' in specific contexts) means any person or firm or company, including any member of a consortium or joint venture (that is an association of several persons, or firms or companies), every artificial juridical person not falling in any of the descriptions of bidders stated hereinbefore, including any agency branch or office controlled by such person, participating in a Tender Process.
- 5) "Bill of Quantities" (including the term Price Schedule or BOQ) means the priced and completed Bill of Quantities forming part of the bid.
- 6) "Commercial Bank" means a bank, defined as a scheduled bank under section 2(e) of the Reserve Bank of India Act, 1934.
- 7) "Consignee" means the person to whom the goods are required to be delivered as stipulated in the contract. A contract may provide the goods to be delivered to an interim consignee for further despatch to the ultimate consignee.
- 8) "Contract" (including the terms 'Purchase Order' or 'Supply Order' or 'Withdrawal Order' or 'Work Order' or 'Consultancy Contract' or 'Contract for Services', 'rate contract' or 'framework contract' or 'Letter of Award –LoA' (letter or memorandum communicating to the contractor the acceptance of his bid) or 'Agreement' or a 'repeat order' accepted/ acted upon by the contractor or a 'formal agreement', under specific contexts), means a formal legal agreement in writing relating to the subject matter of procurement, entered into between the Procuring Entity and the contractor on mutually acceptable terms and conditions and which are in compliance with all the relevant provisions of the laws of the country;
- 9) "Contractor" (including the terms 'Supplier' or 'Service Provider' or 'Consultant' or 'Firm' or 'Vendor' or 'Manufacturer' or 'Successful Bidder' under specific contexts) means the person, firm, company, or a Joint Venture with whom the contract is entered into and shall be deemed to include the contractor's successors (approved by the Procuring Entity), agents, subcontractor, representatives, heirs, executors, and administrators as the case may be unless excluded by the terms of the contract.;
- 10) "Day", "Month", "Year" shall mean calendar day/ month or year (unless reference to financial year is clear from the context).
- 11) "Drawing" means the drawing or drawings stipulated in or annexed to the Specifications or the Tender Document/ Contract;
- 12) "General Conditions" means the General Conditions of Contract, also referred to as GCC.
- 13) "Goods" (including the terms 'Stores', 'Material(s)' in specific contexts) includes all articles, material, commodity, livestock, medicines, furniture, fixtures, raw material, consumables, spare parts, instruments, machinery, equipment, industrial plant, vehicles, aircrafts, ships, railway rolling stock assemblies, sub-assemblies, accessories, a group of machines comprising an integrated production process or such other categories of goods or intangible, products like technology transfer, licenses, patents or other intellectual properties (but excludes books, publications, periodicals, etc., for a library) under specific context), procured or otherwise

acquired by a Procuring Entity. Any reference to Goods shall be deemed to include specific small work or some services that are incidental or consequential to the supply of such goods;

- 14) "Government" means the Central Government or a State Government as the case may be and includes agencies and Public Sector Enterprises under it, in specific contexts;
- 15) "Inspection" means activities such as measuring, examining, testing, analysing, gauging one or more characteristics of the goods or services or works, and comparing the same with the specified requirement to determine conformity.
- 16) "Inspecting Officer" means the person or organisation stipulated in the contract for inspection under the contract and includes his/ their authorised representative;
- 17) "Intellectual Property Rights" (IPR) means the rights of the intellectual property owner concerning a tangible or intangible possession/ exploitation of such property by others. It includes rights to Patents, Copyrights, Trademarks, Industrial Designs, Geographical indications (GI).
- 18) "Parties": The parties to the contract are the "Contractor" and the Procuring Entity, as defined in this clause;
- 19) "Performance Security" (includes the terms 'Security Deposit' or 'Performance Bond' or 'Performance Bank Guarantee' or other specified financial instruments in specific contexts) means a monetary guarantee to be furnished by the successful Bidder or Contractor in the form prescribed for the due performance of the contract;
- 20) "Place of Delivery" the delivery of the Goods shall be deemed to take place on delivery of the Goods, after approval by the Inspecting Officer (If provided in the contract) at following places as per the terms and conditions of the contract -
 - (a) The consignee at his premises; or
 - (b) Where so provided, the interim consignee at his premises; or
 - (c) A carrier or other person named in the contract for transmission to the consignee: or
 - (d) The consignee at the destination station in case of a contract stipulating for delivery of Goods at the destination station.
- 21) "Procurement" or "public procurement" (or 'Purchase', or 'Government Procurement/ Purchase' including an award of Public-Private Partnership projects, in specific contexts) means the acquisition of Goods/ Services/ works by way of purchase, lease, license or otherwise, either using public funds or any other source of funds (e.g. grant, loans, gifts, private investment etc.) of goods, works or services or any combination thereof, by a Procuring Entity, whether directly or through an agency with which a contract for procurement services is entered into, but does not include any acquisition without consideration. The term "procure"/ "procured" or "purchase"/ "purchased" shall be construed accordingly;
- 22) "The Procuring Entity" means the entity in The Procuring Organization procuring Goods or Works or Services;
- 23) "Procurement Officer" means the officer signing the Letter of Award (LoA) and/or the contract on behalf of the Procuring Entity;
- 24) "Service(s)" (including the term 'Non-consultancy services' or 'Outsourcing of Services' in specific contexts) are defined by exclusion as services that cannot be classified as Consultancy

Services. Services (Non-consultancy) involve routine, repetitive physical, procedural, and non-intellectual outcomes for which quantum and performance standards can be tangibly identified and consistently applied and are bid and contracted on such basis but does not include the appointment of an individual made under any law, rules, regulations, or order issued in this behalf. Any reference to Services shall be deemed to include the supply of goods or performance of consultancy service or small works, which are incidental or consequential to such services;

- 25) "Special Conditions" means Special Conditions of Contract, which override the General Conditions, also referred to as SCC.
- 26) "Specification" or "Technical Specification" means the drawing/ document/ standard or any other details governing the construction, manufacture or supply of goods or performance of services that prescribes the requirement to which goods or services have to conform as per the contract.
- 27) "Signed" means ink signed or digitally signed with a valid Digital Signature as per IT Act 2000 (as amended from time to time). It also includes stamped, except in the case of Letter of Award or amendment thereof.;
- 28) "Tender"; "Tender Document"; "Tender Enquiry" or "Tender Process": 'Tender Process' is the whole process from the publishing of the Tender Document till the resultant award of the contract. 'Tender Document' means the document (including all its sections, appendices, forms, formats, etc.) published by the Procuring Entity to invite bids in a Tender Process. The Tender Document and Tender Process may be generically referred to as "Tender" or "Tender Enquiry", which would be clear from context without ambiguity.
- 29) "Test" means such test as is prescribed by the particulars governing the construction, manufacture or supply of Goods as may be prescribed by the contract or considered necessary by the Inspecting Officer whether performed or made by the Inspecting Officer or any agency acting under the direction of the Inspecting Officer;
- 30) "Works" refer to any activity involving construction, fabrication, repair, overhaul, renovation, decoration, installation, erection, excavation, dredging, and so on, which make use of a combination of one or more of engineering design, architectural design, material and technology, labour, machinery, and equipment.

1.3 Document Conventions

All words and phrases defined in GCC-clause 1.2 are written as 'Capitalised word' and shall have the defined meaning. The rest of the words shall be as per grammar, inter-alia 'Goods' shall indicate definition as given in the GCC while 'goods' shall have usual dictionary meaning.

1.4 Abbreviations:

| Abbreviation | Definition |
|--------------|--|
| AITB | Appendix to Instructions To Bidders |
| BOQ | Bill of Quantities (Excel sheet of Price Schedule) |
| BSD | Bid Securing Declaration |
| CFR | Cost and Freight (port of destination) |

| Abbreviation | Definition |
|--------------|---|
| CGST | Central Goods and Services Tax |
| CIF | Cost, Insurance & Freight (port of destination) |
| CPPP | Central Public Procurement Portal |
| DAP | Delivered at Place (Destination) |
| DoE | Department of Expenditure |
| DP | Delivery Period |
| DPIIT | Department for Promotion of Industry and Internal Trade |
| DSC | Digital Signature Certificate |
| e-RA | Electronic Reverse Auction |
| EFT/ NEFT | (National) Electronic Funds Transfer |
| ERV | Exchange Rate Variation |
| FAS | Free Alongside Ship (port of loading) |
| FDI | Foreign Direct investment |
| FOB | Free on Board (port of loading) |
| FOR | Free on Rail (named Station) |
| GCC | General Conditions of Contract |
| GeM | Government e-Marketplace |
| GRIR | Goods Receipt and Inspection Report |
| GST | Goods and Services Tax |
| GTE | Global Tender Enquiry (International Competitive Bidding) |
| HSN | Harmonized System of Nomenclature |
| IEM | Independent External Monitor |
| IPR | Intellectual Property Rights |
| INR | Indian Rupee |
| ITB | Instructions To Bidders |
| ITC (HS) | Indian Tariff Classification (Harmonised System) |
| LoA | Letter of Award (Acceptance) |
| MII | Make in India |
| MSE | Micro and Small Enterprises |

| Abbreviation | Definition |
|--------------|-------------------------------------|
| MSME | Micro, Small and Medium Enterprises |
| MSMED | MSME Development (Act) |
| NIT | Notice Inviting Tender |
| OEM | Original Equipment Manufacturer |
| PVC | Price Variation Clause |
| PAN | Permanent Account Number |
| PC | (Indian) Penal Code |
| PPD | Procurement Policy Division |
| PQB | Pre-Qualification Bidding |
| RAP | Reverse Auction (Process) |
| RCM | Reverse Charge Mechanism |
| SC | Scheduled Caste |
| SCC | Special Conditions of Contract |
| ST | Scheduled Tribe |
| TCS | Tax Collected at Source |
| TDS | Tax Deducted at Source |
| TIA | Tender Inviting Authority |
| TIS | Tender Information Summary |

2. The Contract

2.1 Language of Contract

Unless otherwise stipulated in SCC, the contract shall be written in the Official Language or English. All correspondence and other contract documents, which the parties exchange, shall also be written/ translated accordingly in that language. For purposes of interpretation of the contract, the English documents/ translation shall prevail.

2.2 The Entire Agreement

This Contract and its documents (referred to in GCC-clause 2.5below) constitutes the entire agreement between the Procuring Entity and the contractor and supersedes all other communications, negotiations, and agreements (whether written or oral) of the Parties made before the date of this Contract. No agent or representative of either Party has the authority to make, and the Parties shall not be bound by or be liable for, any statement, representation, promise or agreement not outlined in this Contract.

2.3 Severability

If any provision or condition of this Contract is prohibited or rendered invalid or unenforceable, such prohibition, invalidity or unenforceability shall not affect the validity or enforceability of any other provisions and conditions of this Contract.

2.4 Parties

The parties to the contract are the contractor and the Procuring Entity, as defined in GCC-clause 1.2 above and nominated in the contract.

2.5 Contract Documents and their Precedence

The following conditions and documents in indicated order of precedence (higher to lower) shall be considered an integral part of the contract, irrespective of whether these are not appended/ referred to in it. Any generic reference to 'Contract' shall imply reference to all these documents as well:

- 1) Valid and authorized Amendments issued to the contract.
- 2) the Agreement consisting of the initial paragraphs, recitals and other clauses set forth immediately before the GCC and including the formats annexed to it and signatures of Procuring Entity;
- 3) the Letter of Award (LoA)
- 4) Final written submissions made by the contractor during negotiations, if any;
- 5) Scope of Work
- 6) Specification/Standard of Service
- 7) the SCC
- 8) the GCC
- 9) the contractor's bid;
- 10) Payment terms
- 11) Price Schedule
- 12) Non Disclosure Agreement
- 13) any other document listed in the SCC as forming part of this Contract.
- 14) Integrity Pact if any

2.6 Modifications/ Amendments, Waivers and Forbearances

2.6.1 Modifications/ Amendments of Contract

- 1) If any of the contract provisions must be modified after the contract documents have been signed, the modifications shall be made in writing and signed by the Procuring Entity, and no modified provisions shall be applicable unless such modifications have been done. No variation in or modification of the contract terms shall be made except by a written amendment signed by the Procuring Entity. Requests for changes and modifications may be submitted in writing by the contractor to the Procuring Entity. At any time during the currency of the contract, the Procuring Entity may suo- moto or, on request from the contractor, by

written order, amend the contract by making alterations and modifications within the general scope of the Contract.

- 2) If the contractor does not agree to the suo -moto modifications/amendments made by the Procuring Entity, he shall convey his views within 14 days from the date of amendment/modification. Otherwise, it shall be assumed that the contractor has consented to the amendment.
- 3) Any verbal or written arrangement abandoning, modifying, extending, reducing, or supplementing the contract or any of the terms thereof shall be deemed conditional and shall not be binding on the Procuring Entity unless and until the same is incorporated in a formal instrument and signed by the Procuring Entity, and till then the Procuring Entity shall have the right to repudiate such arrangements.

2.6.2 Waivers and Forbearances

The following shall apply concerning any waivers, forbearance, or similar action taken under this Contract:

- 1) Any waiver of a Procuring Entity's rights, powers, or remedies under this Contract must be in writing, dated, and signed by an authorized representative of the Procuring Entity granting such waiver and must specify the terms under which the waiver is being granted.
- 2) No relaxation, forbearance, delay, or indulgence by Procuring Entity in enforcing any of the terms and conditions of this Contract or granting of an extension of time by Procuring Entity to the contractor shall, in any way whatsoever, prejudice, affect, or restrict the rights of Procuring Entity under this Contract, neither shall any waiver by Procuring Entity of any breach of Contract operate as a waiver of any subsequent or continuing breach of Contract.

3. Governing Laws and Jurisdiction

3.1 Governing Laws and Jurisdiction

- 1) This Contract, its meaning and interpretation, and the relation between the Parties shall be governed by the Laws of India for the time being in force.
- 2) Irrespective of the place of delivery, or the place of performance or the place of payments under the contract, the contract shall be deemed to have been made at the place from which the Letter of Award (LoA, or the contract Agreement, in the absence of LoA) has been issued. The courts of such a place shall alone have jurisdiction to decide any dispute arising out or in respect of the contract.

3.2 Changes in Laws and Regulations

Unless otherwise stipulated in the contract, if after the last deadline for the bid submission (Techno-commercial), any law, regulation, ordinance, order or bye-law having the force of law is enacted, promulgated, abrogated, or changed in India (which shall be deemed to include any change in interpretation or application by the competent authorities) that subsequently affects the Delivery Date and/ or the contract Price, then such Delivery Date and/ or Contract Price shall be correspondingly increased or decreased, to the extent that the contractor has thereby been affected in the performance of any of its obligations under the contract. Notwithstanding the foregoing, such additional or reduced cost shall not be separately paid or credited if the same has already been accounted for in the price adjustment provisions where applicable.

4. Communications

4.1 Communications

- 1) All communications under the contract shall be served by the parties on each other in writing, in the contract's language, and served in a manner customary and acceptable in business and commercial transactions.
- 2) The effective date of such communications shall be either the date when delivered to the recipient or the effective date mentioned explicitly in the communication, whichever is later.
- 3) No communication shall amount to an amendment of the terms and conditions of the contract, except a formal letter of amendment of the contract, so designated.
- 4) Such communications would be an instruction or a notification or an acceptance or a certificate from the Procuring Entity, or it would be a submission or a notification from the contractor. A notification or certificate which the contract requires must be communicated separately from other communications.

4.2 The person signing the Communications

For all purposes of the contract, including arbitration, there under all communications to the other party shall be signed by:

- 1) The person who has signed the contract on behalf of the contractor shall sign all correspondences. A person signing communication in respect of the contract or purported to be on behalf of the contractor, without disclosing his authority to do so, shall be deemed to warrant that he has authority to bind the contractor. If it is discovered at any time that the person, so signing has no authority to do so, the Procuring Entity reserves its right to, without prejudice to any other right or remedy, to terminate the contract for default in terms of the contract and avail any or all the remedies there under and hold such person personally and/or the contractor liable to the Procuring Entity for all costs and damages arising from such remedies.
- 2) Unless otherwise stipulated in the contract, the Procurement Officer signing the contract shall administer the contract and sign communications on behalf of the Procuring Entity. Interim or ultimate consignees; Inspecting Agency/ officers and the paying authorities mentioned in the contract shall also administer respective functions during Contract Execution.

4.3 Address of the parties for sending communications by the other party.

- 1) For all purposes of the contract, including arbitration, there under the address of parties to which the other party shall address all communications and notices shall be:
 - (a) The address of the contractor as mentioned in the contract unless the contractor has notified the change of address by a separate communication containing no other topic to the Procuring Entity. The Contractor shall be solely responsible for the consequence of an omission to notify a change of address in the manner aforesaid, and
 - (b) The address of the Procuring Entity shall be the address mentioned in the contract. The contractor shall also send additional copies to officers of the Procuring Entity presently dealing with the contract.
 - (c) In case of the communications from the contractor, copies of communications shall be marked to the Procurement Officer signing the contract, and as relevant also to

Inspecting Agency/ Officer; interim/ ultimate consignee and paying authorities mentioned in the contract. Unless already stipulated in the contract before the contract's start, the Procuring Entity and the contractor shall notify each other if additional copies of communications are to be addressed to additional addresses.

5. Contractor's Obligations and restrictions on its Rights

5.1 Changes in Constitution/ financial stakes/ responsibilities of a Contract's Business

The Contractor must proactively keep the Procuring Entity informed of any changes in its constitution/ financial stakes/ responsibilities during the execution of the contract. Where the contractor is a partnership firm, the following restrictions shall apply to changes in the constitution during the execution of the contract:

- 1) a new partner shall not be introduced in the firm except with the previous consent in writing of the Procuring Entity, which shall be granted only upon execution of a written undertaking by the new partner to perform the contract and accept all liabilities incurred by the firm under the contract before the date of such undertaking.
- 2) On the death or retirement of any partner of the contractor firm before the complete performance of the contract, the Procuring Entity may, at his option, terminate the contract for default as per the Contract and avail any or all remedies there under.
- 3) If the contract is not terminated as provided in Sub-clause (2) above notwithstanding the retirement of a partner from the firm, that partner shall continue to be liable under the contract for acts of the firm until a copy of the public notice given by him under Section 32 of the Partnership Act, has been sent by him to the Procuring Entity in writing or electronically.

5.2 Obligation to Maintain Eligibility and Qualifications

- 1) The contract has been awarded to the contractor based on specific eligibility and qualification criteria. The Contractor is contractually bound to maintain such eligibility and qualifications during the execution of the contract. Any change which would vitiate the basis on which the contract was awarded to the contractor should be pro-actively brought to the notice of the Procuring Entity within 7 days of it coming to the Contractor's knowledge. These changes include but are not restricted to:

(a) Change regarding declarations made by it in its bid in Form 1.2: Eligibility Declaration

5.3 Change in its qualification criteria submitted in its bid in Form 4: Qualification Criteria - Compliance and its sub-form(s).Restriction on Potential Conflict of Interests

Neither the contractor nor its Subcontractors nor the Personnel shall engage, either directly or indirectly, in any of the following activities:

- 1) during the term of this Contract, any business or professional activities in India that would conflict with the activities assigned to them under this Contract.
- 2) after the termination of this Contract, such other activities as may be stipulated in the contract.

5.4 Consequences of a breach of Obligations

Should the contractor or any of its partners or its Subcontractors or the Personnel commit a default or breach of GCC-clause 5.1 to 5.7, the Contractor shall remedy such breaches within 21 days, keeping

the Procuring Entity informed. However, at its discretion, the Procuring Entity shall be entitled, and it shall be lawful on his part, to treat it as a breach of contract and avail any or all remedies there under. The decision of the Procuring Entity as to any matter or thing concerning or arising out of GCC-clause 5.1 to 5.7 or on any question whether the contractor or any partner of the contractor firm has committed a default or breach of any of the conditions shall be final and binding on the contractor.

5.5 Assignment and Sub-contracting

- 1) the contractor shall not, save with the previous consent in writing of the Procuring Entity, sublet, transfer, or assign the contract or any part thereof or interest therein or benefit or advantage thereof in any manner whatsoever.
- 2) the contractor shall notify the Procuring Entity in writing all subcontracts awarded under the contract if not already stipulated in the contract. In its original bid or later, such notification shall not relieve the contractor from any of its liability or obligation under the terms and conditions of the contract. Subcontract shall be only for bought out items and incidental Works/ Services. Subcontracts must comply with and should not circumvent Contractor's compliance with its obligations under GCC-clause 5.1 to 5.7, based on which the contract was awarded to him.
- 3) If the Contractor sublets or assigns this contract or any part thereof without such permission, the Procuring Entity shall be entitled, and it shall be lawful on his part, to treat it as a breach of contract and avail any or all remedies there under.

5.6 Indemnities for breach of IPR Rights

- 1) the contractor shall indemnify and hold harmless, free of costs, the Procuring Entity and its employees and officers from and against all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of any nature, including attorney's fees and expenses, which may arise in respect of the Goods provided by the contractor under this Contract, as a result of any infringement or alleged infringement of any patent, utility model, registered design, copyright, or other Intellectual Proprietary Rights (IPR) or trademarks, registered or otherwise existing on the date of the contract arising out of or in connection with:
 - (a) any design, data, drawing, specification, or other documents or Goods provided or designed by the contractor for or on behalf of the Procuring Entity.
 - (b) The sale by the Procuring Entity in any country of the products produced by the Goods supplied by the contractor, and
 - (c) The installation of the Goods by the contractor or the use of the Goods at the Procuring Entity's Site
- 2) Such indemnity shall not cover any use of the Goods or any part thereof or any products produced thereby:
 - (a) other than for the purpose indicated by or to be reasonably inferred from the contract
 - (b) in association or combination with any other equipment, plant, or materials not supplied by the contractor.
- 3) If any proceedings are brought, or any claim is made against the Procuring Entity arising out of the matters referred above, the Procuring Entity shall promptly give the contractor a notice thereof. At its own expense and in the Procuring Entity's name, the contractor may conduct

such proceedings and negotiations to settle any such proceedings or claim, keeping the Procuring Entity informed.

- 4) If the contractor fails to notify the Procuring Entity within twenty-eight (28) days after receiving such notice that it intends to conduct any such proceedings or claim, then the Procuring Entity shall be free to conduct the same on its behalf at the risk and cost to the contractor.
- 5) At the contractor's request, the Procuring Entity shall afford all available assistance to the contractor in conducting such proceedings or claim and shall be reimbursed by the contractor for all reasonable expenses incurred in so doing.

5.7 Confidentiality, Secrecy and IPR Rights

5.7.1 IPR Rights

All deliverables, outputs, plans, drawings, specifications, designs, reports, and other documents and software submitted by the contractor under this Contract shall become and remain the property of the Procuring Entity and subject to laws of copyright and must not be shared with third parties or reproduced, whether in whole or part, without the Procuring Entity's prior written consent. The contractor shall, not later than upon termination or expiration of this Contract, deliver all such documents and software to the Procuring Entity, together with a detailed inventory thereof. The contractor may retain a copy of such documents and software but shall not use it for any commercial purpose.

5.7.2 Confidentiality

All documents, drawings, samples, data, associated correspondence or other information furnished by or on behalf of the Procuring Entity to the contractor, in connection with the contract, whether such information has been furnished before, during or following completion or termination of the contract, are confidential and shall remain the property of the Procuring Entity and shall not, without the prior written consent of Procuring Entity neither be divulged by the contractor to any third party, nor be used by him for any purpose other than the design, procurement, or other services and work required for the performance of this Contract. If advised by the Procuring Entity, all copies of all such information in original shall be returned on completion of the contractor's performance and obligations under this contract.

5.7.3 Secrecy

If The Contract declares the subject matter of this Contract as coming under the Official Secrets Act, 1923 or if the contract is marked as "Secret", the contractor shall take all reasonable steps necessary to ensure that all persons employed in any connection with the contract, have acknowledged their responsibilities and penalties for violations under the Official Secrets Act and any regulations framed there under.

5.7.4 Obligations of the contractor

- 1) Without the Procuring Entity's prior written consent, the contractor shall not use the information mentioned above except for the sole purpose of performing this contract.
- 2) The contractor shall treat and mark all information as confidential(or Secret – as the case may) and shall not, without the written consent of the Procuring Entity, divulge to any person other than the person(s) employed by the contractor in the performance of the contract. Further,

any such disclosure to any such employed person shall be made in confidence and only so far as necessary for such performance for this contract.

- 3) Notwithstanding the above, the contractor may furnish to its holding company or its Subcontractor(s) such documents ,data ,and other information it receives from the Procuring Entity to the extent required for performing the contract. In this event, the contractor shall obtain from such holding company/ Subcontractor(s)an under taking of confidentiality(or secrecy – as the case may be) similar to that imposed on the contractor under the above clauses.
- 4) The obligation of the contractor under sub-clauses above, however, shall not apply to information that:
 - (a) the contractor needs to share with the institution(s) participating in the financing of the contract;
 - (b) now or hereafter is or enters the public domain through no fault of Contractor;
 - (c) can be proven to have been possessed by the contractor at the time of disclosure and which was not previously obtained, directly or indirectly, from the Procuring Entity; or
 - (d) otherwise lawfully becomes available to the contractor from a third party that has no obligation of confidentiality.
- 5) The above provisions shall not in any way modify any undertaking of confidentiality (or Secrecy – as the case may be) given by the contractor before the date of the contract in respect of the contract/ the Tender Document or any part thereof.
- 6) The provisions of this clause shall survive completion or termination for whatever reason of the contract.

5.8 Performance Bond/ Security

- 1) Within fourteen days (or any other period mentioned in Tender Document or Contract) after the issue of Letter of Award (LoA or the contract, if LoA is skipped) by the Procuring Entity, the contractor shall furnish to the Procuring Entity, performance security, valid up to sixty days (or any other period mentioned in Tender Document or Contract) after the date of completion of all contractual obligations by the contractor, including the warranty obligations.
- 2) The amount of Performance security shall be as stipulated in Tender Document or Contract (or if not specified @ 5% of the contract Price)denominated in Indian Rupees or the currency of the contract and shall be in one of the following forms:
 - (a) Unless otherwise stipulated in Tender Document or Contract, Account Payee Demand Draft or Fixed Deposit Receipt or Banker's Cheque is drawn on any commercial bank in India, favouring the authority mentioned in therein (or FA&CAO of the Procuring Organisation, if not mentioned).
 - (b) Bank Guarantee issued by a commercial bank in India, in the prescribed Format.
- 3) If the contractor, having been called upon by the Procuring Entity to furnish Performance Security, fails to do so within the specified period, it shall be lawful for the Procuring Entity at its discretion to annul the award and enforce Bid Securing Declaration (in lieu of forfeiture of the Bid Security), besides taking any other administrative punitive action like 'Removal from List of Registered Suppliers' etc.
- 4) If the contractor during the currency of the Contract fails to maintain the requisite Performance Security, it shall be lawful for the Procuring Entity at its discretion at its discretion

- (a) to terminate the Contract for Default besides availing any or all contractual remedies provided for breaches/ default, or
 - (b) without terminating the Contract:
- a) recover from the contractor the amount of such security deposit by deducting the amount from the pending bills of the contractor under the contract or any other contract with the Procuring Entity or the Government or any person contracting through the Procuring Organisation or otherwise howsoever as per GCC-clause 10.4, or
- b) treat it as a breach of contract and avail any or all availing any or all contractual remedies provided for breaches/ default.
- 5) In the event of any amendment issued to the contract, the contractor shall furnish suitably amended value and validity of the Performance Security in terms of the amended contract within fourteen days of issue of the amendment.
- 6) The Procuring Entity shall be entitled, and it shall be lawful on his part,
 - (a) to deduct from the performance securities or to forfeit the said security in whole or in part in the event of:
 - (i) any default, or failure or neglect on the part of the contractor in the fulfilment or performance in all respect of the contract under reference or any other contract with the Procuring Organisation or any part thereof
 - (ii) for any loss or damage recoverable from the contractor which the Procuring Entity may suffer or be put to for reasons of or due to above defaults/ failures/ neglect
 - (b) and in either of the events aforesaid to call upon the contractor to maintain the said performance security at its original limit by making further deposits, provided further that the Procuring Entity shall be entitled, and it shall be lawful on his part, to recover any such claim from any sum then due or which at any time after that may become due to the contractor for similar reasons.
- 7) Subject to the sub-clause above, the Procuring Entity shall release the performance security without any interest to the contractor on completing all contractual obligations, including the warranty obligations, if any. Alternatively, for the duration of Warranty obligations, upon the contractor submitting a suitable separate Warranty Security, the original Performance Guarantee Security shall be released mutatis mutandis.
- 8) No claim shall lie against the Procuring Entity regarding interest on cash deposits or Government Securities or depreciation thereof.

5.9 Permits, Approvals and Licenses

Whenever the supply of Goods and incidental Works/ Services requires that the contractor obtain permits, approvals, and licenses from local public authorities, it shall be the contractor's sole responsibility to obtain these and keep these current and valid. Such requirements may include but not be restricted to export licence or environmental clearance if required. If requested by the contractor, the Procuring Entity shall make its best effort to assist the contractor in complying with such requirements in a timely and expeditious manner, without any dilution of the Contractor's responsibility in this regard.

5.10 Book Examination Clause

If explicitly invoked in the contract, the Procuring Entity reserves the right for 'Book Examination' as follows:

- 1) the contractor shall, whenever called upon and required to produce or cause to be produced, for examination by any Government Officer duly authorised in that behalf, any cost or other book of account, voucher, receipt, letter, memorandum, paper or writing or any copy of or extract from any such document. The Contractor shall also furnish information relating to the execution of this contract or relevant for verifying or ascertaining the cost of executing this contract to such Government Officer in such manner as may be required. The decision of such Government Officer on the question of relevancy of any document, information of return being final and binding on the parties. The obligation imposed by this clause is without prejudice to the contractor's obligations under any other statute, rules or orders which shall be concurrently binding on the contractor.
- 2) the contractor shall, if the authorised Government Officer so requires (whether before or after the prices have been finally fixed), afford facilities to the Government Officer concerned to visit the contractor's premises to examine the processes of production and estimate or ascertaining the cost of performance of Contract. The authorised Government Officer shall have power, *mutadis mutandis*, to examine all the relevant books of Contractor's subcontractor, or any subsidiary or allied firm or company, If any portion of the contract is entrusted or carried out by such entities.
- 3) If on such examination, it is established that the contracted price is more than the actual cost-plus reasonable margin of profit, the Procuring Entity shall have the right to reduce the price and determine the amount to a reasonable level.
- 4) The Contractor or its agency is bound to allow examination of its books within 60 days from the date the notice is received by the contractor or its agencies calling for the production of documents under sub-clause (1) above. In the event of the contractor's or his agency's failure to do so, the contract price would be reduced and determined according to the best judgment of the Procuring Entity, which would be final and binding on the contractor and his agencies.

5.11 Custody and Return of the Procuring Entity's Materials/ Equipment/ Documents loaned to Contractor.

- 1) Unless stipulated in the contract, no asset/ property/ drawings/ material/ samples/ equipment/ utility shall be provided or loaned to the contractor for the performance of the contract. Whenever such assets are required to be issued to the contractor (inter-alia in fabrication or design or development) as per the contract, these would be issued only as per terms and conditions and against appropriate safeguards (including Insurances, Bank Guarantee, Indemnity Bonds, Retention Money etc.) specified therein. The Contractor shall use such property for the execution of the contract and no other purpose whatsoever.
- 2) The contractors shall sign receipts for all tools, plants and materials or other assets/ properties made over to him by the Procuring Entity. All such assets shall be deemed to be in good condition when received by the contractor unless he has within twenty-four hours of the receipt thereof notified the Procuring Entity to the contrary. Otherwise, he shall be deemed to have lost the right to do so at any subsequent stage.
- 3) These assets shall remain the property of the Procuring Entity, and the contractor shall take all reasonable care of all such assets. The contractor shall be responsible for all damage or loss

from whatever cause caused while such assets are possessed or controlled by the contractor, staff, workmen or agents.

- 4) Where the contractor insures such assets against loss or fire at the request of the Procuring Entity, such insurance shall be deemed to be by way of additional precaution and shall not prejudice the liability of the contractor as aforesaid
- 5) The Contractor shall return all such assets in good order or repair, fair wear and tear excepted, before the completion/ closure/ termination of the contract and shall be responsible for any failure to account for the same or any damage done to that as assessed by the Procuring Entity, whose decision shall be final and binding.

5.12 Labour Codes and Related Obligations

This clause shall be applicable only if it is specifically indicated to be applicable in SCC.

5.12.1 Independent Contractor

The contractor's status shall be that of an independent contractor and Primary Employer of staff deployed during the contract by him or his sub-contractors or other associates. The Contractor, its employees, agents, and subcontractors performing under this Contract are not employees or agents of the Procuring Organisation or Procuring Entity or Central or State Government or their agencies/ Enterprises, simply by Services delivered under this Contract.

5.12.2 Obligations of the contractor under Labour Codes and Rules

- 1) In cases where Contract or part(s) thereof is to be performed by the contractor at the premises of the Procuring Entity or Consignee, the contractor shall comply with the provisions of the Labour Codes, which including Code on Wages, 2019, The Industrial Relations Code 2020, Code on the Social Security 2020, and The Occupational Safety, Health and Working Conditions 2020, and Draft Rules made there under, as modified from time-to-time, wherever applicable and shall also indemnify the Procuring Entity from and against any claims under the aforesaid Labour codes and the Rules.
- 2) The Contractor shall obtain a valid licence under the aforesaid Labour codes and the Rules as modified from time-to-time before the commencement of the contract and continue to have a valid licence until the completion of the contract. Any failure to fulfil this requirement, the Procuring Entity shall treat it as a breach of contract for default as per the contract and avail any or all remedies there under.
- 3) In respect of all labour directly or indirectly employed in the contract for the performance of the contractor's part of the contract, the contractor shall comply with or cause to comply with the provisions of the aforesaid Labour codes and the Rules wherever applicable. The contractor shall be solely responsible for submitting all the necessary returns under these Codes and the Rules. Nevertheless, the contractor shall submit monthly returns to the Procuring Entity to confirm compliance with such Codes and rules. Failure to do so shall entitle Procuring Entity to take any measure to ensure compliance to such codes and rules by the contractor and his associates, including, but not limited to, withholding contractor's on-account bills.
- 4) The Contractor shall pay the wages as per the Code on Wages to their workers not below the rate of minimum wages, as notified by the State Government or Central Government, whichever is higher, through the bank transfer. Notwithstanding the contract's provisions to the contrary, the Contractor shall cause to be paid the wages to labour directly or indirectly

engaged on the contract, including any engaged by his Sub-Contractors in connection with the said contract as if he had immediately employed the labour. The Procuring Entity shall, without any commitments or being obliged to do, may its discretion, monitor that such payments are being made. The Contractor shall be required to submit, every month, documentary evidence in the form of a Bank Statement of having transferred the gross minimum wages to each of the workers. Failure to do so shall entail Procuring Entity taking up any measure to ensure the payment of wages including, but not limited to, withholding contractor's on-account bills.

- 5) In every case in which, by virtue of the provisions of the aforesaid Labour codes and the Rules, the Procuring Entity is obliged to pay any amount of wages to a workman employed by the contractor or his Sub-Contractor in execution of the contract or to incur any expenditure in providing welfare and health amenities required to be provided under the aforesaid Labour codes and the Rules or to incur any expenditure on account of the contingent liability of the Procuring Entity due to the contractor's failure to fulfil his statutory obligations under the aforesaid Labour codes and the Rules the Procuring Entity shall recover from the contractor, the amount of wages so paid or the amount of expenditure so incurred, and without prejudice to the rights of the Procuring Entity under the aforesaid Labour codes and the Rules, the Procuring Entity shall be at liberty to recover such amount or part thereof by deducting it from the security deposit and/ or from any sum due by the Procuring Entity to the contractor whether under the contract or otherwise. The Procuring Entity shall not be bound to contest any claim made against it under the aforesaid Labour codes and the Rules except on the contractor's written request, and upon giving the Procuring Entity complete security for all costs, Procuring Entity might become liable in contesting such claim. The decision of the Procuring Entity regarding the amount actually recoverable from the contractor as stated above shall be final and binding on the contractor.

5.12.3 The obligation of Contractor to ensure awareness of Labour Codes

- 1) The Contractor has to mandatorily provide a comprehensive day-long training carried out by a certified Third-Party agency for the awareness of Labour codes and the Rules, grievance redressal mechanism and other provisions applicable to his and his Sub-contractor's staff, workers, labour employed by him directly or indirectly in delivery of service to the Procuring Entity. The Contractor must submit relevant documentary proof to Procuring Entity of having conducted such training to all workers.
- 2) The Contractor must provide a comprehensive booklet (Procuring Entity approves that) containing all the relevant updated labour codes, rules, and other applicable provisions, to every worker at the outset of the contract in the local vernacular language.
- 3) Procuring Entity, without any commitments or being obliged to do, may its discretion, provide following facilities for Contractor's Contract Labour working on this Contract:
 - a) Helpline for complaints from labour regarding payment of wages, worksite facilities, sexual harassment etc.
 - b) Provision for recording anonymous complaints from workers, citizens etc., regarding violation of Labour codes and the Rules by Contractor.

6. Scope of Supply and Technical Specifications

6.1 The Scope of Supply

- 1) This contract is for the supply of the Goods of the description, specifications, and drawings, and in the quantities outlined in the contract on the dates specified therein.
- 2) **Incidental Works/ Services:** If so stipulated, the contractor shall be required to perform specified incidental Works/ Services (e.g., Installation, Commissioning, Operator's Training etc. in case of Supply of Capital Goods/ Machinery & Plant) as an integral part of the Goods in the contract.

6.2 Technical Specifications and Standards

The Goods & incidental Works/ Services to be provided by the contractor under this contract shall conform to the technical specifications and quality control parameters mentioned in 'Specification/Standard of Services' in the Tender Document or as stipulated in the contract. Wherever references are made in the Contract to codes and standards by which it shall be executed, the edition or the revised version of such codes and standards shall be those specified in the Contract. During Contract execution, any changes in any such codes and standards shall be applied only after approval by the Purchaser. For standards and requirements where no applicable specifications/ Quality Assurance are mentioned, appropriate latest authoritative standards and quality assurance issued by the concerned institution shall be applicable. The Goods supplied shall be.

- 1) Entirely brand new, unused, and incorporate all recent improvements in design and materials unless prescribed otherwise by the Procuring Entity in the contract.
- 2) conform to materials, manufacture and workmanship as stipulated in the contract, free of all defects and faults using specified/ appropriate materials, manufacture, and workmanship throughout and consistent with the established and generally accepted standards for Goods of the type ordered and in full conformity with the contract specification, drawing or sample, if any.

6.3 Quantity Tolerance

Unless otherwise stipulated in the contract, the obligation for completing supplies shall be considered complete if the Goods have been supplied to the tolerance of plus or minus 5% of the quantity or of the total value of goods ordered in the contract. Only the supplied quantity shall be paid for as per the terms of the contract.

6.4 Eligible Goods - Country of Origin and Minimum Local Content

Unless otherwise stipulated in SCC or Contract, the country of origin of 'Goods' and 'incidental Works/Service' to be supplied under the contract shall have their origin in India or other countries and must conform to the declaration made by the contractor in its bid regarding but not limited to i) restrictions on certain countries with land-borders with India; ii) minimum local content and location of value addition (Make in India Policy); iii) Contractor's status as MSE or Start-up. The term "origin" used in this clause means where the goods (including subcontracted components) are mined, grown, produced, or manufactured or from where the incidental Works/Services are arranged and supplied. For purposes of this Clause, the term 'Goods' shall have the meaning as defined in GCC-clause 1.2.

6.5 Option Quantity Clause:

If invoked explicitly in the contract, the Procuring Entity shall reserve the right, but without any obligation to do so, to increase or decrease the ordered quantity upto a percentage specified therein (or 25% if not specified) at any time, till the final delivery date of the contract, by giving reasonable

notice and commensurate delivery period, even though the quantity ordered initially has been supplied in full before the last date of Delivery Period.

6.6 Spare parts in Supply of Capital Goods/ Machinery and Plant

- 1) If SCC/ Contract declares it to be the procurement of Capital Goods/ Machinery & Plant, the contractor shall supply/ provide any or all of the following materials, information etc. about spare parts manufactured and/ or supplied by them:
 - (a) The spare parts as selected by the Procuring Entity to be purchased from the contractor, subject to the condition that such purchase of the spare parts shall not relieve the contractor of any contractual obligation including warranty obligations; and
 - (b) In case the production of the spare parts is discontinued within the service life of the equipment supplied hereunder (or a period stipulated in the contract):
 - (i) sufficient advance notice to the Procuring Entity before such discontinuation to provide adequate time for it to purchase the required spare parts etc., and
 - (ii) immediately following such discontinuation, as and if requested by the Procuring Entity, provide free of cost the designs, drawings, layouts, specifications, and alternative sources of supply of such spare parts.
- 2) the contractor shall carry sufficient inventories to assure ex-stock supply of consumable spares for the Goods so that the same is supplied to the Procuring Entity promptly on receipt of the order from the Procuring Entity.

6.7 Warranty/ Guarantee

If so stipulated in the SCC/ Contract, the following warranty/ Guarantee clause shall apply:

- 1) the contractor hereby covenants that it is a condition of the contract that all Goods supplied to the Procuring Entity under this contract shall be free of all defects and faults arising from design, materials (except when the design adopted and/ or the material used are as per the Procuring Entity's specifications) or workmanship or from any act or omission of the contractor, that may develop under regular use of the supplied Goods under the conditions prevailing in India.
- 2) Unless otherwise indicated in the contract, the contractor also guarantees that the said Goods would continue to conform to the description and quality as aforesaid, for 30 months after their delivery or 24 months from the date of placement in service (e.g., installation and commissioning), whichever shall be sooner.
- 3) Obligations of the contractor under the warranty clause shall survive even though:
 - (a) The Goods may have been inspected, accepted, installed/ commissioned and paid for by the Procuring Entity.
 - (b) The contract is terminated for any reason whatsoever.
- 4) The Procuring Entity shall promptly notify in writing to the contractor, If during the period above, the said goods/ stores/ articles are discovered not to conform to the description and quality or have deteriorated, otherwise than by fair wear and tear (the decision of the Procuring Entity in that behalf being final and conclusive).

- 5) Upon receipt of such notice, the contractor shall, within 14 days (or within any other period, if stipulated in the contract), expeditiously repair or replace the defective Goods or parts thereof, free of cost, at the ultimate destination. The Contractor shall take over the replaced parts/ Goods after providing their replacements, and no claim shall lie on the Procuring Entity for such replaced parts/ Goods after that.
- 6) A penalty of 0.5% (half per cent) of the contract value for the delay in response time beyond specified time as detailed above shall be recoverable from the Performance/ Warrantee Guarantee or as per GCC-clause 10.4 below. The maximum penalty for warranty failure will be 3% (three percent) of the contract value during the whole warranty period. If there is further such delay after reaching this limit, Procuring Entity shall be entitled to encashment of whole of Performance/ Warrantee Guarantee Bonds. In such an event, action similar to GCC-clause 9.10 for inordinate delays would also be taken.
- 7) In case of any rectification of a defect or replacement of any defective Goods during the warranty period, the warranty for the rectified/ replaced Goods shall remain till the original warranty period.
- 8) If the contractor, having been notified, fails to rectify/ replace the defect(s) within 21 days (or within any other period, if stipulated in the contract), it shall amount to breach of Contract for default under GCC-clause 12.1, and the Procuring Entity shall avail any or all remedial action(s) there under.

6.8 Additional Conditions for Rate Contracts

If SCC/ Contracts stipulates explicitly that this is a “Rate Contract” for the supply of the Goods outlined in the Contract during the period therein specified, then the following additional Contract Conditions shall be applicable:

6.8.1 Quantity Contracted-for

- 1) The Rate Contract is only a standing offer from the Contractor. Subject as hereinafter mentioned, no guarantee is given as to the number or quantity of the Goods which shall be ordered during the period of the rate contract.
- 2) The Procuring Entity undertakes to place the supply (withdrawal/ off-take) orders for Goods detailed in the Contract at the terms and prices mentioned therein.
- 3) However, they reserve the right to obtain from any source any Goods referred to in the Contract to meet an emergency or for values less than the threshold specified in the Contract (Rs 1.5 - one and a half - Lakhs, if not specified) if the Procuring Entity is satisfied that the Contractor is not in a position to supply specific quantities of Goods within the period in which these are required.

6.8.2 Applicability of Fall Clause

GCC-clause 10.1.6 shall be expressly applicable to Rate Contracts.

6.8.3 Supply Orders and Deliveries

- 1) Supply (withdrawal/ off take) orders for obtaining supplies through the rate contract, incorporating a definite quantity of Goods along with all other required conditions following the rate contract terms, shall be issued by the Procuring Entity or its nominated Direct

Demanding Officers (D.D.O.). Such DDOs shall be nominated and authorised during the contract period by the Procuring Entity to place such Supply orders directly on the Contractor.

- 2) The Contract shall deliver the quantities thus ordered as per the terms and conditions of the Supply Order and the Rate Contract.
- 3) Procuring Entity is entitled to place supply orders up to the last day of the validity of the rate contract and, though supplies against such supply orders shall be affected beyond the validity period of the rate contract, all such supply shall be guided by the terms & conditions of the rate contract.

6.8.4 Monetary limits for indents

The Procuring Entity may stipulate an upper threshold of value of Supply Orders directly placed by DDOs on the Contractor during the Contract Period. Except with prior approval of the Procuring Entity, the Contractor shall not comply with the supply orders directly received from the DDOs, more than such threshold amount.

6.8.5 Right to repeat competitive bidding

- 1) Procuring Entity reserves the right to undertake repeat competitive bidding through open/ advertised tenders on the same terms & conditions, including specifications during the validity period of existing valid R/Cs.
- 2) In such cases, the existing R/C holders can bid, apart from the new eligible bidders, and equal and fair opportunity would be provided.
- 3) If the prices received are found lower than the existing R.C. prices, new R/Cs may be awarded at reduced prices.
- 4) Existing R/Cs at higher prices may be short-closed, giving adequate notice if they do not match such reduction in prices under the fall clause (GCC-clause 10.1.6).

6.8.6 Short-closing or Renegotiation of the Rate Contract

During the currency of the Rate Contract, the Procuring Entity can short-close the rate contract or renegotiate the price by serving a suitable notice of thirty days.

6.8.7 Renewal of Rate Contracts

In case it is not possible to conclude new rate contracts before the expiry of existing ones, due to some exceptional reasons, the existing rate contracts would be extended with identical terms, conditions etc., for a suitable period, with the consent of the rate contract holders. Rate contracts of the firms, who do not agree to such extension, shall be left out. The period of such extension would generally not be more than three months.

7. Inspection and Quality Assurance

7.1 Tests and Inspections

- 1) The 'Specification/Standards of Services' shall specify inspections and tests (including raw materials and/ or stage inspections, if so specified) to be carried out and where and how they are to be conducted. If such inspections and tests are conducted in the premises of the contractor or its subcontractor(s), all reasonable facilities and assistance, including access to

relevant drawings, design details and production data, shall be furnished by the contractor to the Procuring Entity's inspector at no charge to the Procuring Entity.

- 2) The Procuring Entity and/ or its nominated representative(s) shall, without any extra cost to the Procuring Entity, inspect and/ or test the ordered Goods and the incidental Works/Services to confirm their conformity to the contract specifications and other quality assurance details incorporated in the contract. As soon as a consignment is getting ready, the contractor shall submit a request for inspection to the Inspecting Officer and the Procuring Entity. The Inspecting Officer shall inform the contractor in writing of its programme for such inspection and the officials' identity to be deputed for this purpose.
- 3) If so stipulated in the contract, the contractor shall, before proceeding with bulk manufacture or delivery of the Goods, submit to the Inspecting Officer for inspection samples of the specified raw-material used in the manufacture and/ or the Goods as stipulated in the contract or by the Inspecting Officer. However, the Contractor shall not be entitled to be shown any consideration or give any extension of time or claim to be exonerated from completing the delivery within the stipulated period only on the ground of delay in the approval of any such sample.
- 4) Unless otherwise provided for in the contract, if the test proves satisfactory and the stores or any instalment thereof is accepted, the quantity of the stores or materials expended in the test shall be deemed to have been taken delivery of by the Purchaser and be paid for as such.
- 5) Unless otherwise stipulated, in the contract, all costs of tests and inspections (including any special or third-party tests), whether at the contractor's premises, shall be borne by the contractor. However, in case of stipulation for type testing/ proto-type testing of machinery and plant involving special tests, the contract shall indicate the apportionment of test and expended material costs among the parties.
- 6) Under no circumstances does the Inspecting officer have the authority to modify the governing specifications, approved drawings, or samples during inspection without the Procuring Entity's approval.

7.2 Consequence of Rejection

Upon the Goods being rejected by the Inspecting Officer or Interim Consignee or Consignee at a place other than the premises of the contractor, the Procuring Entity shall be at liberty to:

- 1) Demand that such stores shall be removed by the contractor at his cost subject as hereinafter stipulated, within 21 days of the date of intimation of such rejection. Provided that the Inspecting Officer may call upon the contractor to remove dangerous, infected, or perishable stores within 48 hours of the receipt of such communication and the decision of the Inspecting Officer in this regard shall be final in all respects. Provided further that where the price or part thereof has been paid, the consignee is entitled without prejudice to his other rights to retain the rejected stores till the price paid for such stores is refunded by the contractor or dispose off such rejected Goods as per clause below save that such retention shall not in any circumstances be deemed to be acceptance of the stores or waiver of rejection thereon. The Contractor shall bear all cost of such replacement, including taxes and freight, if any, on replacing and replacing Goods without being entitled to any extra payment on that or any other account.

- 2) All rejected Goods shall, in any event, and circumstances remain and always be at the contractor's risk immediately on such rejection. If the contractor does not remove such Goods within the periods aforementioned, the Procuring entity /inspecting officer, as the case may be as per the place of rejection, may remove the rejected Goods. The Procuring Entity or Inspecting Officer may either return the same to the contractor at his risk and cost by such mode of transport as it may decide or dispose off such Goods at the contractor's risk and on his account and retain such portion of the proceeds from such disposal, as may be necessary to recover any expense incurred in connection with such disposals (or any price refundable as a consequence of such rejection). The Procuring Entity shall, in addition, be entitled to recover from the contractor ground rent/ demurrage charges on the rejected Goods after the expiry of the time-limit mentioned above.
- 3) Disposal of rejected goods in an aforesaid manner shall not exonerate contractor but still hold him liable to pay to the procuring entity, the dues as may arise as per the terms of contract besides the cost of goods if already paid to the contractor and any inspection charges. The Purchaser can take action as per contract terms if the contractor fails to pay the amount due to him.
- 4) where under the contract the price payable is fixed F.O.R. dispatching station, the contractor shall, if the Goods are rejected at destination by the consignee, be liable, in addition to his other liabilities, including a refund of price recoverable in respect of the Goods so rejected, to reimburse to the Procuring Entity the freight and all other expenses incurred by it in this regard. The Contractor shall be allowed to take back rejected Goods only after such refunds are received by the Procuring Entity.

7.3 Inspections at the last moment

- 1) If the contract stipulates pre-despatch inspection of the ordered Goods at Contractors premises, he shall put up the Goods for inspection well ahead of the delivery period to complete the inspection within that period.
- 2) In cases where only a portion of the Goods ordered is tendered for inspection at the last moments of the delivery period and also in cases where inspection is not completed in respect of the portion of the Goods tendered for inspection during the delivery period, the inspector shall carry out the inspection and complete the formality beyond the contractual delivery period at the specific written request by and at the risk and expense of the contractor. The fact that the Goods have been inspected after the contractual delivery period shall not amount to keeping the contract alive, and this shall be without any prejudice to the legal rights and remedies available to the Procuring Entity under the terms & conditions of the contract.
- 3) If the Goods tendered for inspection during or at the last moments of the delivery period are not found acceptable after carrying out the inspection, the Procuring Entity is entitled to cancel the contract in respect of the same at the risk and expense of the contractor. If the Goods tendered for inspection are found acceptable, the Procuring Entity may grant an extension of the delivery period subject to conditions mentioned in GCC-clause 9.11 below.

7.4 Consignee's right of Rejection of Inspected Goods

- 1) Goods accepted by the Procuring Entity and/ or its inspector at the initial inspection and final inspection in terms of the contract shall in no way dilute the Procuring Entity's right to reject the same later if found deficient concerning 'Specifications/Standards of Services'.

- 2) Notwithstanding any approval which the Inspecting Officer may have given in respect of the Goods or any materials or other particulars or the work or workmanship involved in the performance of the contract (whether with or without any test carried out by the contractor or the Inspecting Officer or under the direction of the Inspecting Officer) and notwithstanding delivery of the Goods where so provided to the interim consignee, it shall be lawful for the consignee, on behalf of the Procuring Entity, to inspect, test and, if necessary, reject the Goods or any part, portion or consignment thereof, after the Goods' arrival at the final destination within a reasonable time after actual delivery thereof to him at the place of destination stipulated in the contract, if such Goods or part, portion or consignment thereof is not in all respects in conformity with the terms and conditions of the contract whether on account of any loss, deterioration or damage before despatch or delivery or during transit or otherwise howsoever.

Note: Regarding materials pre-inspected at the firm's premises during manufacture or before delivery or dispatch, the consignee shall issue rejection advice within 90 days from the date of receipt.

8. Packing, Transportation, Insurance and Receipt

8.1 Packing Specifications and Quality

- 1) The marking of the Goods must comply with the Goods of the laws relating to merchandise marks for the time being in force in India.
- 2) The packing for the Goods to be provided by the contractor should be strong and durable enough to withstand, without limitation, the entire journey during transit, including transshipment (if any), rough handling, open storage etc., without any damage, deterioration etc. If necessary, the size, weights, and volumes of the packing cases, the remoteness of the goods' final destination, and availability or otherwise of transport and handling facilities at all points during transit upto the final destination shall also be considered.
- 3) The quality of packing, the manner of marking within & outside the packages, and accompanying documentation shall strictly comply with the 'Technical Specification and Quality Assurance' and in the contract. If the packing requirements are amended due to any amendment to the contract, the contractor shall comply accordingly.
- 4) Unless otherwise provided in the contract, all containers (including packing cases, boxes, tins, drums, and wrappings) in which the contractor supplies the Goods shall be considered non-returnable and their cost included in the contract price.
- 5) If the contract provides that the containers shall be returnable, they must be marked 'returnable'. Unless otherwise specified, the cost of reverse transportation shall be borne by the contractor.
- 6) If the contract provides that returnable containers shall be separately charged, they shall be invoiced by the contractor at a price stipulated in the contract. In such cases, the contractor shall give full credit for the invoiced amount if the containers are returned to the contractor. Return of containers shall be made within a reasonable time, and in the event of any dispute or difference arising as to whether the containers were so returned, the decision of the Procuring Entity thereon shall be final and binding. In his discretion, the Procuring Entity may award such compensations as may, in his opinion, be proper for any undue delay in returning the containers.

8.2 Packing instructions

Unless otherwise mentioned in the 'Technical Specification and Quality Assurance' under Sections VII and SCC under Section V, the contractor shall make separate packages for each consignee (in case there is more than one consignee mentioned in the contract) and mark each package on three sides with the following with indelible paint of proper quality:

- 1) An iconic graphical mark to visually identify a particular consignment.
- 2) Name of the Procuring Entity; contract number and date
- 3) brief description of Goods including quantity.
- 4) the gross weight of the package
- 5) Serial number of this package and the total number of packages in the consignment
- 6) packing list reference number
- 7) country of origin of goods
- 8) consignee's name and full address and
- 9) Contractor's name and address

8.3 Transfer of Title of Goods

- 1) Unless otherwise stated in the contract, notwithstanding any inspection and approval by the Inspecting Officer on the contractor's premises, or any payments made to the contractor, property in the Goods (and resultant rights and liabilities) shall not pass on to the Procuring Entity until the Goods have been received, inspected, and accepted by the consignee. The Goods and every constituent part thereof, whether in the possession or control of the contractor, his agents or servants or a carrier, or the joint possession of the contractor, his agents or servants and the Procuring Entity, his agents, or servants, shall remain in every respect at the risk of the contractor, until their actual delivery to a person stipulated in the contract as the interim consignee for despatch to the consignee. The Contractor shall be responsible for all loss, destruction, damage, or deterioration of or to the Goods from any cause whatsoever while the Goods after approval by the Inspecting Officer are awaiting despatch or delivery or are in the course of transit from the contractor to the consignee or, as the case may be, interim consignee. The Contractor shall alone be entitled and responsible for making claims against any carrier in respect of non-delivery, short delivery, mis-delivery, loss, destruction, damage, or deterioration of the Goods entrusted to such carrier by the contractor for transmission to the consignee or the interim consignee as the case may be.
- 2) Provided that where, under the terms of the contract, the Goods are required to be delivered to an interim consignee for despatch to the consignee, the Goods shall be at the Procuring Entity's risk after their delivery to the interim consignee.

8.4 Transportation

8.4.1 Instructions for transportation of domestic Goods

If no instruction is provided in the contract, the contractor shall arrange transportation of the ordered Goods as per its procedure.

8.4.2 Shipping Arrangement for Foreign Contracts:

In the case of FOB/ FAS contracts, shipping arrangements shall be made by the Procuring Entity. The Contractor shall give adequate notice to the Procuring Entity and its Forwarding Agents/ Nominees about the readiness of the cargo from time to time and at least six weeks' notice in advance of the required date of dispatch for finalising the shipping arrangements. In the case of CFR contracts, the contractor shall arrange the shipment as per the instructions from the Procuring Entity.

8.4.3 Airlifting

Should the Procuring Entity intend to airlift all or some of the Goods, the contractor shall pack the Goods accordingly upon receiving intimation to that effect. Such deliveries shall be agreed upon well in advance and paid for as may be mutually agreed.

8.4.4 Distribution of Despatch Documents for Clearance/ Receipt of Goods

- 1) the contractor shall send all the relevant despatch documents well in time to the Procuring Entity to enable it to clear or receive (as the case may be) the Goods in terms of the contract. Unless otherwise stipulated in the contract, the usual documents involved and the drill to be followed in general for this purpose are as follows:
- 2) For Domestic Goods within 24 hours of despatch, the contractor shall notify the Procuring Entity, consignee, and others concerned, if mentioned in the contract, the complete details of despatch and also supply the following documents (as relevant) to them by registered post/ speed post/ courier besides advance intimation by digital means (or as instructed in the contract or SCC):
 - (a) the contractor's Invoice indicating, inter alia description and specification of the Goods, quantity, unit price, total value;
 - (b) Packing list;
 - (c) Insurance certificate;
 - (d) Railway receipt/ Road Consignment note;
 - (e) Manufacturer's guarantee certificate and in-house inspection certificate;
 - (f) Inspection certificate issued by the Procuring Entity's inspector
 - (g) Expected date of arrival of goods at destination and
 - (h) Any other document(s), as and if mentioned explicitly in the contract.
- 3) For Imported Goods, within 3 days of despatch, the contractor shall notify the Procuring Entity, consignee and other concerned, if mentioned in the contract, the complete details of despatch and also supply the following documents to them by Courier (or as instructed in the contract), besides advance intimation by digital means:
 - (a) Clean on-Board Airway Bill/ Bill of Lading (B/ L)
 - (b) Original Invoice
 - (c) Packing List
 - (d) Certificate of Origin from Seller's Chamber of Commerce
 - (e) Certificate of pre-despatch inspection by the Procuring Entity's representative/ nominee
 - (f) Certificate of Quality and current manufacture from OEM
 - (g) Dangerous Cargo Certificate, if any.
 - (h) Insurance Policy of 110% if CIF contract.
 - (i) Performance Bond/ Warranty Bond

8.5 Freight

The Goods shall be despatched at public tariff rates. In the case of F.O.R. station of despatch contract, the Goods shall be booked by the most economical route or most economical tariff available at the time of despatch as the case may be. Failure to do so shall render the contractor liable for any avoidable expenditure caused to the Procuring Entity. Where alternative routes exist, the Procuring Entity shall, if called upon to do so, indicate the most economical route available or name the authority whose advice in the matter shall be taken and acted upon. If any advice of any such authority is sought, his decision or advice in the matter shall be final and binding on the contractor,

8.6 Insurance

Unless otherwise instructed in the contract, the contractor shall arrange for insuring the Goods against loss or damage incidental to manufacture or acquisition, transportation, storage, and delivery in the following manner:

- 1) In case of domestic goods supply on CIF/ FOR destination basis, the contractor shall be responsible until the entire Goods contracted arrive in good condition at destination. The contractor shall cover the transit risk in this respect by getting the Goods duly insured at its own cost. The contractor shall obtain the insurance cover in its name and not in the name of the Procuring Entity or its Consignee.
- 2) In FOB and CFR offers for the import of Goods, the insurance shall be arranged by the Procuring Entity. However, the contractor must give sufficient notice to the Procuring Entity before the date of shipment so that the Insurance Cover for the shipment can be activated. The Contractor must co-ordinate to ensure that the Shipment sails only with Insurance cover in place.
- 3) In case of import of goods, even when the Procuring Entity pays the insurance, it shall entirely be the contractor's responsibility to make good loss/ damage without waiting for settlement of insurance claim so that equipment is commissioned within the time stipulated in the contract. After the insurance claim settlement, reimbursement shall be made by the Procuring Entity to the contractor.

8.7 Receipt of Consignment

8.7.1 Preliminary Acknowledgement

At the time of the delivery at the destination, the consignee shall receive the Goods on a "subject to inspection and acceptance in terms of contract" basis and shall issue the preliminary receipt to acknowledge having received the claimed quantity (not the quality) of consignment.

8.7.2 Goods Receipt and Inspection Report

If the received consignment successfully passes the quantity and quality checks, procuring Entity shall issue a Goods Receipt and Inspection Report (GRIR, or a similar voucher by any other name). The contractor may claim payment based on this document inter-alia other specified documents.

8.7.3 Rejection of Consignment by the Consignee

If the received consignment or part thereof fails to pass quantity and quality checks, the Procuring Entity shall issue a Rejection Note, noting the reasons for rejection. The Paying Authority shall recover any part payment or freight charges paid for the rejected consignment. The Contractor shall take back the rejected consignment as per GCC-clause 7.2 above within 21 days unless otherwise stipulated in the contract.

8.7.4 Short Receipt Certificate

If the quantity received is less than claimed/ invoiced, GRIR/Rejection Note shall be issued only for the received quantity. In such cases, a short receipt certificate shall also be issued by the consignee.

8.7.5 Perishable Goods

For Goods with a limited shelf life, the contractor shall ensure that at least 75% (or any other percentage stipulated in the contract) of shelf life remains abalance on delivery date. The Procuring Entity reserves its rights to reject expired or products with less than such specified shelf life.

9. Terms of Delivery and delays

9.1 Effective Date of Contract

The effective date of the contract shall be the date on which it has been signed by the Procuring Entity or the effective date mentioned in the contract, whichever is later. If the procurement entity receives no communication from the contractor within 14 days of the date signed by the procuring entity or the date of sending it to the contractor, whichever is later, then the date of signing shall be the effective date of the contract. The dates of deliveries shall be counted from such date. No notice to commence the contract shall be issued separately.

9.2 Time is the Essence of the contract

The time for and the date for delivering the Goods stipulated in the contract or as extended shall be deemed to be of the essence of the contract. Delivery must be completed not later than the date(s) so specified or extended.

9.3 Destination Places

The destination(s) where the Goods are to be delivered shall be as stipulated in the contract or Section VI – Schedule of Requirements.

9.4 Terms of Delivery

- 1) Terms of delivery (e.g., F.O.R. destination/ CIF/ DAP etc.) shall determine the point at which the responsibilities and property in goods passes over from the contractor to the Procuring Entity. These terms also determine the time of delivery.
- 2) the contractor shall either deliver free or F.O.R. or C.I.F. at the place/ places or otherwise as detailed in the contract, the quantities of the Goods detailed therein, and the Goods shall be delivered or despatched not later than the dates stipulated in the contract. The delivery shall not be complete unless the Goods are inspected and accepted by the Consignee as provided in the contract. No Goods shall be deliverable to the consignee on Sundays and public holidays or outside designated working hours without the written permission of the consignee.
- 3) the contractor shall not despatch the Goods after the expiry of the delivery period. The Contractor must apply to the Procuring Entity to extend the delivery period and obtain the same before despatch. If the contractor despatches the Goods without obtaining an extension, it would be doing so at its own risk, and no claim for payment for such supply and/ or any other expense related to such supply shall lie against the Procuring Entity.

9.5 Part Supplies

The Contractor shall not arrange part-shipments and/ or transshipment if not stipulated in the contract without the express/ prior written consent of the Procuring Entity.

9.6 Progressing of Deliveries

The Contractor shall allow reasonable facilities and free access to his Works/ records to the Inspecting Officer or such other Officer as may be nominated by the Procuring Entity to ascertain the progress of the deliveries under the contract. The Contractor shall, from time-to-time, render such reports concerning the progress of the contract and/ or supply of the Goods in such form as may be required by the Procuring Entity. The submission, receipt and acceptance of such reports shall not prejudice the rights of the Procuring Entity under the contract, nor shall operate as an estoppel against the

Procuring Entity merely because he has not taken notice of/ or subjected to test any information contained in such report.

9.7 Notification of Delivery.

Notification of delivery or despatch regarding every instalment shall be made to the consignee and to the Procuring Entity immediately on despatch or delivery. The Contractor shall further supply to the consignee, or the interim consignee, as the case may be, packing list of the consignment and the contract references. All packages, containers, bundles, and loose materials part of every instalment shall be fully described in the packing list, and complete details of the contents of the packages and quantity of materials shall be given to enable the consignee to check the Goods on arrival at destination. The Railway Receipt/ Consignment Note or Bill of Lading shall be forwarded to the consignee by registered post/ Courier/ by hand immediately on the despatch of Goods. The Contractor shall bear and reimburse the Procuring Entity demurrage/ wharfage or other charges, if any, paid because of delay on the contractor's part in forwarding the Railway Receipt, Consignment Note or Bill of Lading.

9.8 Dispatches at the last moment or after the expiry of the delivery

- 1) If the contractor locally supplies a consignment after the expiry of the contracted delivery date, the Consignee may either refuse to receive it or receive it without prejudice to the rights of the Procuring Entity under the terms and conditions of the contract. Such consignments shall lie at the risk and responsibility of the contractor. Such a receipt by the consignee shall not acquiesce or condone the late delivery and shall not intend or amount to an extension of the delivery period or keeping the contract alive. The Contractor must obtain an extension of the delivery date/period from the Procuring Entity.
- 2) As regards supplies coming from outside, if the contractor dispatches the Goods after the expiry of the delivery period, it shall be at his own risk and responsibility, and that the consignee is not liable for any demurrage, wharfage, and deterioration of Goods at the destination station and, in his interest, the contractor shall get an extension of the delivery period from the contracting Entities.
- 3) In the case of imports, the contractor must not dispatch the consignment after the expiry of the delivery period without taking a prior extension of the delivery period. Otherwise, payment against the LC shall be denied. If dispatched, it shall be at the risk and responsibility of the contractor and procuring entity shall not take any responsibility for such consignments.

9.9 Delay in the contractor's performance

If the contractor fails to deliver the Goods or any instalment thereof or delays incidental Work/ Services (e.g. installation, commissioning, operator training etc.) within the period fixed for such delivery in the contract or as extended or at any time repudiates the contract before the expiry of such period, the Procuring Entity may without prejudice to his other rights:

- 1) recover from the contractor liquidated damages as per clause 9.12 below, or
- 2) treat the delay as a breach of contract as per clause 12.1 below and avail all the remedies therein.

9.10 Inordinate Delays

Inexcusable delays of more than one-fourth (25%) of the total completion period shall be treated as inordinate delays. Such inordinate delays shall be noted as poor performance and be held against the contractor in future tenders. A show-cause notice shall be issued to the contractor before declaring it a poor performance. Such delays may be considered as a breach of the contract at the option of the Procuring Entity.

9.11 Extension of Delivery Period:

- 1) If at any time during the currency of the contract, the contractor encounters conditions hindering timely delivery of the Goods and performance of incidental Works/ Services, he shall promptly inform the Procuring Entity in writing about the same and its likely duration. He must make a request to the Procuring Entity for an extension of the delivery schedule. On receiving the contractor's communication, the Procuring Entity shall examine the situation and, at its discretion, may agree to extend the delivery schedule, with or without liquidated damages and with and without denial clause by issuing an amendment to the contract.
- 2) **Conditions for Extension of Delivery Period:** When the period of delivery is extended due to unexcused delay by the contractor, the amendment extending the delivery period shall, inter alia, be subject to the following conditions:
 - (a) **Liquidated Damages:** The Procuring Entity shall recover from the contractor, under the provisions of this clause, liquidated damages on the Goods and incidental Works/ Services, which the contractor has failed to deliver within the delivery period stipulated in the contract.
 - (b) **Denial Clause:**
 - (i) No increases in price on account of any statutory increase in or fresh Imposition of GST, customs duty or on account of any other taxes/ duty/ cess/ levy), leviable in respect of the Goods and incidental Works/Services stipulated in the said contract which takes place after the original delivery date, shall be admissible on such of the said Goods, as are delivered after the said date; and
 - (ii) Notwithstanding any stipulation in the contract for an increase in price on any other ground, including price variation clause or foreign exchange rate variation, or any other variation clause, no such increase after the original delivery date shall be admissible on such goods delivered after the said date.
 - (iii) Nevertheless, the Procuring Entity shall be entitled to the benefit of any decrease in price on account of reduction in or remission of GST, customs duty or on account of any other Tax or duty or any other ground as stipulated in the price variation clause or foreign exchange rate variation or any other variation clause which takes place after the expiry of the original delivery date.

9.12 Liquidated damages

- 1) Subject to GCC clause 9.11, if the contractor fails to deliver any or all of the Goods or fails to perform the incidental Works/ Services(e.g. installation, commissioning or operator training) within the time frame(s) incorporated in the contract, the Procuring Entity shall, without prejudice to other rights and remedies available to the Procuring Entity under the contract, deduct from the contract price, as agreed liquidated damages, but not as a penalty, a sum equivalent to the 0.05%percent (or any other percentage if prescribed in the contract) of the delivered price (including elements of GST & freight) of the delayed Goods and/ or incidental Works/ Services for each day of delay or part thereof until actual delivery or performance,

subject to a maximum deduction of the 10% (or any other percentage if prescribed in the contract) of the delayed Goods' or incidental Works/ Services' contract price(s). Besides liquidated damages during such a delay, the denial clause as per GCC-clause 9.11-2(b) shall also apply.

- 2) Any failure or delay by any sub-contractor, though their employment may have been sanctioned under GCC-clause 5.5 above, shall not be admitted as a ground for any extension of time or for exempting the contractor from liability for any such loss or damage as aforesaid.

9.13 Force Majeure

- 1) On the occurrence of any unforeseen event, beyond the control of either Party, directly interfering with the delivery of Services arising during the currency of the contract, such as war, hostilities, acts of the public enemy, civil commotion, sabotage, fires, floods, explosions, epidemics, quarantine restrictions, strikes, lockouts, or acts of God, the affected Party shall, within a week from the commencement thereof, notify the same in writing to the other Party with reasonable evidence thereof. Unless otherwise directed by the Procuring Entity in writing, the contractor shall continue to perform its obligations under the contract as far as reasonably practicable and shall seek all reasonable alternative means for performance not prevented by the Force Majeure event. If the force majeure condition(s) mentioned above be in force for 90 days or more at any time, either party shall have the option to terminate the contract on expiry of 90 days of commencement of such force majeure by giving 14 days' notice to the other party in writing. In case of such termination, no damages shall be claimed by either party against the other, save and except those which had occurred under any other clause of this contract before such termination.
- 2) Notwithstanding the remedial provisions contained in GCC-clause 9.12 or 12.1, none of the Party shall seek any such remedies or damages for the delay and/ or failure of the other Party in fulfilling its obligations under the contract if it is the result of an event of Force Majeure.

10. Prices and Payments

10.1 Prices

10.1.1 Charged Prices

Prices to be charged by the contractor for the supply of Goods and provision of incidental Works/ Services in terms of the contract shall not vary from the corresponding prices quoted by the contractor in its bid or during negotiations, if any, and incorporated in the contract except for any price adjustment authorized in the contract.

10.1.2 Controlled Prices

- 1) The price charged by the contractor shall not be higher than the controlled price fixed by law for the Goods, or where there is no controlled price, it shall not exceed the minimum of Maximum Retail Price (MRP) at which the same or similar Goods are available in the market in the relevant region, or contravene the norms for fixation of prices laid down by Government, or where the Government has not fixed such prices or norms, it shall not exceed the price appearing in any agreement relating to price regulation by any industry in consultation with the Government.

- 2) **Penalties for overcharging:** If the sub-clause above is violated, unless the contractor had explicitly mentioned this fact in his bid giving reasons for quoting a higher price (s), or makes any mis-statement, it shall be lawful for the Procuring Entity to:
- (a) annul the award and treat it as a misdemeanour as per the contract and take any or all punitive remedies available there under, or
 - (b) without annulling the award, take action as per GCC-clause 10.4 to recover the overcharged amount, or
 - (c) treat it as a breach of contract as per GCC-Clause 12.1 and avail any or all remedies there under.

10.1.3 Price Components and Incidental Works/ Services

Unless otherwise stated in the contract, The Procuring Entity shall not pay for consignment of incomplete components unless the full useable Scope of Goods (as per the contract/ Schedule of Requirement) has been received. Deficiencies in incidental Works/ Services shall also amount to incomplete delivery. Spares would not be paid for unless the primary Goods are received.

10.1.4 Firm Prices

Unless otherwise stipulated in the contract, Prices shall be fixed and firm. If a Price Variation Clause, an Exchange Rate Variation Clause, or any other variation clause is included, such up and down variations shall also be payable as per clause 10.3.3 below.

10.1.5 Price Variation and Exchange Variation Clause

- (a) In case the contract provides for a Price Variation Clause or Exchange Rate variation clause or variation on any other account, the price shall be subject to adjustment as per such clauses, only during the original Delivery Period, subject to the following:
- (b) Any increase due to such variations during the extended delivery period, beyond the original delivery period, shall not be paid by the Procuring Entity; however, it shall be entitled to any reduction during this period under the GCC-clause 9.11-2)b) (Denial Clause).
- (c) Taxes and duties, if any, chargeable and payable on the Goods shall be charged on the nett price after variations.
- (d) While claiming payments where such variations are applicable, the contractor must submit its calculations for each invoice, even if the payment on account of these variations is nil. Prices reduction due to such variations must be passed on to the Procuring Entity.
- (e) **No Other Claim due to Variations:** With the payment of such variations, no additional individual claim shall be admissible on account of fluctuations in market rates, increase in taxes/any other levies/tolls etc.

1) Price Variation Clause

- (a) If the Price Variation clause is applicable as per the contract, the price shall be subject to adjustment to take care of the changes in the cost of labour, material, and fuel/ power components as per the price variation formula specified therein. The amount payable on account of Price variation shall be settled every quarter.
- (b) **Base Month and Quarter:** Unless otherwise stipulated in the contract, the Base Month for 'Price Variation Clause' shall be taken as the month before the month of the last date of bid submission, if any, unless otherwise stated elsewhere. The Base Quarter for applicability of PVC shall end on the Base Month. Unless The Contract has stipulated a different time lag for reckoning Price Variation, the month of reckoning the varied price shall be the month before the month in which delivery has been made. The Quarter of reckoning for applicability of PVC shall end on the Month of reckoning. The Price Variation shall be based on the relevant Indices in the Base Quarter and Quarter of reckoning.
- (c) **Applicability:** If Contract provides for some inputs to be supplied by Procuring Entity free or at a fixed rate, cost of such inputs shall be excluded from the value of the Goods supplied in the relevant quarter for payment/recovery Of price variation.

2) Exchange Rate Variation Clause

- (a) The contract shall indicate import content and the currency used for calculating import content. The Base Exchange rate of each significant currency used for calculating the Foreign Exchange content of the contract shall be as prevailing on the last deadline for submission of Techno-commercial Bids, and variation beyond the base Exchange Rate shall be calculated up to the midpoint of the delivery period unless the bidder has already indicated the schedule within which the bidder shall import material.
- (b) Unless otherwise stipulated in the contract, documents for claiming ERV shall be:
 - (i) A bill of ERV claim enclosing working sheet.
 - (ii) Banker's Certificate/ debit advice detailing F.E. paid and exchange rate as on the date of the relevant transactions.
 - (iii) Copies of import order/agreement placed by the contractor on its Suppliers.
 - (iv) Invoice of Contractor's Suppliers for the relevant import order

10.1.6 Fall Clause

This clause shall be applicable only if explicitly invoked in SCC. Nevertheless, Fall Clause shall be expressly applicable in case of Rate Contract (Refer SCC-clause 6.8):

- 1) The price charged for the Goods supplied under the contract by the contractor shall in no event exceed the lowest price at which the contractor sells the Goods or offers to sell Goods of identical description, to any persons/ organisations including the Procuring Entity or any Department or Undertaking of the Central Government, as the case may be during the currency of the contract. Contractor shall forthwith notify such reduction or sale or offer of sale to the Procuring Entity and the price payable under the contract for the Goods supplied after the date of coming into force or such reduction or sale or offer of sale shall stand correspondingly reduced.
- 2) The above stipulation shall, however, not apply to:
 - (a) Exports by the contractor

- (b) Sale of Goods as original equipment at prices lower than the prices charged for normal replacement
 - (c) Sale of perishable Goods having a limited shelf life, such as drugs that have expiry dates
- 3) the contractor shall furnish the following certificate to the concerned Accounts Officer with each bill for payment of supplies made against the contract.

** We certify that there has been no reduction in the sale price of the Goods of description identical to the Goods supplied to the Procuring Entity under the contract herein, and such Goods have not been offered/ sold by me/ us to any person/ organisation including any Ministry/ Department/ Attached and Subordinate Office/ Public Sector Undertaking of Central or State Government(s) as the case may be upto the date of bill/ the date of completion of Contract at a price lower than the price charged under this contract except for the quantity of Goods categories under (a), (b) and (c) of sub-clause (2) above, details of which are as follows:-"*

10.2 Taxes and Duties

- 1) the contractor shall be entirely responsible for all taxes, duties, fees, levies etc., incurred until delivery of the Goods to the Procuring Entity. Further instruction, if any, shall be as provided in the contract.
- 2) If applicable under relevant tax laws and rules, the Procuring Entity shall deduct from all payments and deposit required taxes to respective authorities on account of GST Reverse Charge Mechanism; Tax Deducted at Source (TDS), and Tax Collected at Source (TCS) relating to Income Tax, labour cess, royalty etc.
- 3) **Payment of GST Tax under the contract:**
 - (a) The payment of GST and GST Cess to the contractor shall be made only on the latter submitting a GST compliant Bill/ invoice indicating the appropriate HSN code and applicable GST rate thereon duly supported with documentary evidence as per the provision of relevant GST Act and the Rules made there under. The delivery shall be shown being made in the name, location/ state, and GSTIN of the consignee only; the location of the procurement office of the procuring entity has no bearing on the invoicing.
 - (b) The supply of Goods or services or both, if imported into India, shall be considered as supply under inter-state commerce/ trade and shall attract integrated tax (IGST). The IGST rate and GST cess shall be applicable on the 'Custom Assessable Value' plus the 'Basic Customs duty applicable thereon'.
 - (c) While claiming reimbursement of duties, taxes etc. (like GST) from the Procuring Entity, as and if permitted under the contract, the contractor shall also certify that in case it gets any refund out of such taxes and duties from the concerned authorities at a later date, it (the contractor) shall refund to the Procuring Entity, the Procuring Entity's share out of such refund received by the contractor. The Contractor shall also refund the appropriate amount to the Procuring Entity immediately on receiving the same from the concerned authorities.
 - (d) All necessary adjustment vouchers such as Credit Notes/ Debit Notes for any short/ excess supplies or revision in prices or any other reason under the contract shall be submitted to the Procuring Entity in compliance with GST provisions.
 - (e) Liquidated damages or any other recoveries should be shown as deductions on the invoice, and GST shall be applicable only on the nett balance payment due.

- (f) In case of Price Variation or Exchange Rate variation, or any other variation is applicable, GST shall be applicable on the nett invoice value after the variation is taken into account.
 - (g) GST shall be paid as per the rate at which it is liable to be assessed or has been assessed provided the transaction of the sale is legally liable to such taxes and is payable as per the terms of the contract subject to the following conditions:
 - (i) The Procuring Entity shall not pay a higher GST rate if leviable due to any misclassification of HSN number or incorrect GST rate incorporated in the contract due to contractor's fault. Wherever the contractor invoices the Goods at GST rate or HSN number, which is different from that incorporated in the contract, payment shall be made as per GST rate, which is lower of the GST rates incorporated in the contractor billed.
 - (ii) However, the Procuring Entity shall not be responsible for the contractor's tax payment or duty under a misapprehension of the law.
 - (iii) Bidder is informed that he shall be required to adjust his basic price to the extent required by a higher tax rate billed as per invoice to match the all-inclusive price mentioned in the contract.
 - (iv) In case of profiteering by the contractor relating to GST tax, the Procuring Entity shall treat it as a violation of the Code of Integrity in the contract and avail any or all punitive actions thereunder, in addition to recovery and action by the GST authorities under the Act.
 - (v) The contractor should issue Receipt vouchers immediately on receipt of all types of payments along with tax invoices after adjusting advance payments, if any, as per Contractual terms and GST Provisions.
 - (vi) Liquidated damages or any other recoveries should be shown as deductions on the invoice, and GST shall be applicable only on the nett balance payment due.
- 4) **Statutory Variation Clause:** Unless otherwise stated in the contract, statutory increase in applicable GST rate only during the original delivery period shall be to Procuring Entity's account. Any increase in the rates of GST beyond the original completion date during the extended delivery period shall be borne by the contractor. The benefit of any reduction in GST rate must be passed on to the Procuring Entity during the original and extended delivery period. However, GST rate amendments shall be considered for quoted HSN code only, against documentary evidence, provided such an increase of GST rates after the last date of bid submission.

5) **Duties/ Taxes on Raw Materials**

The Procuring Entity is not liable for any claim from the contractor on account of fresh imposition and/ or increase (including statutory increase) of GST, customs duty, or other duties on raw materials and/ or components used directly in the manufacture of the contracted Goods taking place during the pendency of the contract unless such liability is expressly agreed to in terms of the contract.

6) **Customs Duty**

Bidder shall specify the rate and the total amount of customs duty payable regarding imported goods. Bidder shall also indicate the corresponding Indian Tariff Classification (ITC-HS) applicable for the Goods in question.

10.3 **Terms and Mode of Payment**

10.3.1 For Domestic Goods:

- 1) The payments shall be made in the manner as per Procuring Entity's payment procedures. Unless otherwise stipulated in the SCC, payments above INR 5,000 (or any other threshold specified) to Contractors shall be made through EFT only. The Contractor shall give his consent in a mandate form for receipt of payment through NEFT. In case of non-payment through EFT, or where the EFT facility is not available, payment may be released through cheque.
- 2) Payment will be made as per payment term stipulated in the SCC.

10.3.2 For Imported Good:

- 1) Unless otherwise stipulated in the contract, payments are made through an irrevocable Letter of Credit (LC).
 - (a) In cases where Installation, Erection and Commissioning (if applicable) are not the responsibility of the contractor, 95% of the contract price shall be paid against documents stipulated in the contract. The remaining 5 percent on receipt of the Goods as per the terms of the contract in good condition by the Consignee, and on producing the certificate of such receipt endorsed on one copy of the Inspection Note by the Consignee, or at the contractor's option, the full value of the Goods shall be paid after inspection, on receipt of the consignment as per the terms of the contract in good condition by the Consignee and on producing a certificate of such receipt endorsed on one copy of the Inspection Note.
 - (b) In cases where Installation, Erection and Commissioning are the responsibility of the contractor – the percentage stipulated in the contract of the net FOB/ FAS price shall be paid against documents stipulated in the contract and balance within 21 - 30 days of successful installation and commissioning at the consignee's premises and acceptance by the consignee.
 - (c) Payment of Agency Commission against FOB/ FAS Contract – Entire 100% agency commission shall be paid in Indian Rupees after the expiry of 90 days after the discharge of all obligations under the contract and after all other payments have been made to the contractor in terms of the contract. The source's tax deductions apply to the agency commission paid to the Indian agent as per the prevailing rules.

10.3.3 General Payment condition for payment

- 1) In Domestic Contracts, payments shall only be made in Indian Rupees. In Global Tenders, payment to foreign bidders shall be made in the currency/ currencies authorized in the contract. However, agency commission and local value addition shall be paid only in Indian Rupees.
- 2) the contractor shall send its claim for payment in writing as per GST compliant Invoice and documents, when contractually due, along with relevant documents etc., as stipulated in Contract and a manner as also specified therein.
- 3) While claiming payment, the contractor is also to certify in the bill that the payment being claimed is strictly in terms of the contract and all the obligations on the part of the contractor for claiming that payment has been fulfilled as required under the contract.
- 4) Unless otherwise specified documents which the contractor is to furnish while claiming payment are:

- (a) Original Invoice (GST Compliant format)
 - (b) Certificate of pre-despatch inspection by the Procuring Entity's representative/ nominee, if applicable
 - (c) Manufacturer's test certificate, if applicable
 - (d) Performance/ Warrantee Bond, if applicable
 - (e) Certificate of Insurance, if applicable
 - (f) Clean on Bill of lading/ Airway bill/ Rail receipt or any other despatch document, in case of payment against dispatch documents, if so provided
 - (g) Consignee's Certificate confirming receipt and acceptance of Goods, in case of payment after receipt and acceptance
 - (h) Any other document specified.
- 5) In a case where the contractor is not in a position to submit its bill for the balance payment for want of receipt certificate from the consignee and the consignee has not complained about the non-receipt, shortage, or defects in the supplies made, the balance amount shall be paid by the paying authority without consignee's receipt certificate after three months from the date of the preceding part payment for the Goods in question, subject to the following conditions:
- (a) The contractor must provide proof that he has given sufficient prior notice in this regard to the Procuring Entity and the concerned Consignee(s), but there has been no response.
 - (b) the contractor shall undertake to make good any defect or deficiency that the consignee (s) may report within six months from the date of despatch of Goods.
 - (c) Delay in supplies, if any, has been regularized.
 - (d) The Contract price, where it is subject to variation, has been finalized.
 - (e) the contractor furnishes the following undertakings:

"We, _____ certify that We have not received back the Inspection Note duly receipted by the consignee or any communication from the Procuring Entity or the consignee about non-receipt, shortage or defects in the Goods supplied. We _____ undertake to make good any defect or deficiency that the consignee may report within three months from the date of receipt of this balance payment or six months from the date of despatch, whichever is later.

10.3.4 Advance/ mobilization Payment:

Unless otherwise stipulated, Payments for supplies made or incidental works/ services rendered shall be released after supplies have been made and only after such incidental works/ services have also been rendered. If expressly provided for in the contract, partial payments against dispatch documents shall not be considered an advance payment for this clause.

10.4 Withholding and lien in respect of sums claimed:

- 1) Whenever any claim or claims for payment of a sum of money arises against the contractor, out of or under the contract, the Procuring Entity shall be entitled, and it shall be lawful on his part, to withhold and also have a lien to retain such sum or sums, in whole or in part pending finalisation or adjudication of any such claim from-
 - (a) any security or retention money, if any, deposited by the contractor.

- (b) any sum(s) payable till now or hereafter to the contractor under the same Contract or any other contract with the Procuring Entity if the security is insufficient or if no security has been taken from the contractor.
- 2) Where the contractor is a partnership firm or a limited company, the Procuring Entity shall be entitled, and it shall be lawful on his part, to withhold and also have a lien to retain towards such claimed amount or amounts in whole or in part from any sum found payable to any partner/ limited company, as the case may be, whether in his capacity or otherwise.
- 3) It is an agreed term of the contract that the sum(s) of money so withheld or retained under the lien referred above shall be kept withheld or retained till the claim arising out of or under the contract is determined under clause GCC 11 and/ or 12. The contractor shall have no claim for interest or damages whatsoever on any account in respect of such withholding or retention under the lien referred to supra and duly notified as such to the contractor.
- 4) **Lien in respect of Claims in other Contracts:** Any sum of money due and payable to the contractor (including the security deposit returnable to him) under the contract may be withheld or retained by way of lien by the Procuring Entity or Government against any claim of the Procuring Entity or Government in respect of payment of a sum of money arising out of or under any other contract made by the contractor with the Procuring Entity or Government.

10.5 Payment Against Time-Barred Claims

All claims against the Procuring Entity shall be legally time-barred after three years calculated from the date when the payment falls due unless the payment claim has been under correspondence. The Procuring Entity is entitled to, and it shall be lawful for it to reject such claims.

10.6 Commissions and Fees

The Contractor shall disclose any commissions or fees that may have been paid or are to be paid to agents, representatives, or commission agents concerning the selection process or execution and performance of this Contract. The information disclosed must include the name and address of the agent, representative, or commission agent, the amount and currency, and the purpose of the commission or fee in a format similar to Form 1.4 of the Tender Document.

11. Resolution of disputes

11.1 Disputes and Excepted Matters

All disputes and differences between the parties hereto, as to the construction or operation of this contract, or the respective rights and liabilities of the parties on any matter in question; or any other account whatsoever, but excluding the Excepted Matters (detailed below); arising out of or in connection with the contract, within thirty (30) days from aggrieved Party notifying the other Party of such matters; whether before or after the completion/ termination of the contract, that cannot be resolved amicably between the Procurement Officer and the contractor within thirty (30) days from aggrieved Party notifying the other Party of such matters, shall be hereinafter called the "Dispute". The aggrieved party shall give a 'Notice of Dispute' indicating the Dispute and claims citing relevant Contractual clause to the designated authority and requesting for invoking the following dispute resolution mechanisms. The Dispute shall be resolved without recourse to courts through dispute resolution mechanisms detailed subsequently, in the sequence as mentioned below, and the next mechanism shall not be invoked unless the earlier mechanism has been invoked or has failed to resolve it within the deadline mentioned therein.

- 1) Adjudication
- 2) Conciliation
- 3) Arbitration

11.2 Excepted Matters

Matters for which provision has been made in any Clause of the contract shall be deemed as 'excepted matters' (matters not disputable/ arbitrable), and decisions of the Procuring Entity, thereon shall be final and binding on the contractor. The 'excepted matters' shall stand expressly excluded from the purview of the sub-clauses below, including Arbitration. However, where the Procuring Entity has raised the dispute, this sub-clause shall not apply. Unless otherwise stipulated in the contract, excepted matters shall include but not limited to:

- 1) any controversies or claims brought by a third party for bodily injury, death, property damage or any indirect or consequential loss arising out of or in any way related to the performance of this Contract ("Third Party Claim"), including, but not limited to, a Party's right to seek contribution or indemnity from the other Party in respect of a Third-Party Claim.
- 2) Issues related to the pre-award tender process or conditions
- 3) Issues related to ambiguity in contract terms shall not be taken up after a contract has been signed. All such issues should be highlighted before the signing of the contract by the contractor.
- 4) Provisions incorporated in the contract, which are beyond the purview of The Procurement Entity or are in pursuance of policies of Government, including but not limited to
 - (a) Provisions of restrictions regarding local content and Purchase Preference to Local suppliers in terms of Make in India policy of the Government
 - (b) Provisions regarding restrictions on Entities from Countries having land-borders with India in terms of the Government's policies in this regard
 - (c) Purchase preference policies regarding MSEs and Start-ups

11.3 Adjudication

After exhausting efforts to resolve the Dispute with the Purchasing Officer executing the contract on behalf of the Procuring Entity, the contractor shall give a 'Notice of Adjudication' specifying the matters which are in question, or subject of the dispute or difference indicating the relevant contractual clause, as also the amount of claim item-wise to Procurement or any other authority mentioned in the contract(hereinafter called the "Adjudicator") for invoking resolution of the dispute through Adjudication. During his adjudication, the Adjudicator shall give adequate opportunity to the contractor to present his case. Within 60 days after receiving the representation, the Adjudicator shall make and notify decisions in writing on all matters referred to him. The parties shall not initiate, during the adjudication proceedings, any conciliation or arbitral or judicial proceedings in respect of a dispute that is the subject matter of the adjudication proceedings. If not satisfied by the decision in adjudication, or if the adjudicator fails to notify his decision within the abovementioned time-frame, the contractor may proceed to invoke the process of Conciliation as follows.

11.4 Conciliation of disputes

- 1) Any party may invoke Conciliation by submitting "Notice of Conciliation" to the Head of the Procuring Organisation. Since conciliation is a voluntary process, within 30 days of receipt of "Notice of Conciliation", the Head of the Procuring Organisation shall notify a sole Conciliator if the other party is agreeable to enter Conciliation. If the other party is not agreeable to Conciliation, the aggrieved party may invoke Arbitration.
- 2) The Conciliator shall proactively assist the parties to reach an amicable settlement independently and impartially within the terms of the contract, within 60 days from the date of appointment of the Conciliator.
- 3) If the parties reach an agreement on a dispute settlement, they shall draw up a written settlement agreement duly signed by the parties and conciliator. When the parties sign the settlement agreement, it shall be final and binding on the parties. The dispute shall be treated as resolved on the date of such agreement.
- 4) The parties shall not initiate, during the conciliation proceedings, any arbitral or judicial proceedings in respect of a dispute that is the subject matter of the conciliation proceedings.
- 5) Termination of Conciliation: Disputes shall remain alive if the conciliation is terminated as follows:
 - (a) By written declaration of the conciliator, after consultation with the parties, to the effect that further efforts at conciliation are no longer justified, on the date of such declaration; or
 - (b) By a written declaration of any party to the conciliator to the effect that the conciliation proceedings are terminated, on the date of such declaration; or
 - (c) If the parties fail to reach an agreement on a settlement of the dispute, within 60 days of the appointment of Conciliator
- 6) On termination of Conciliation, if the dispute is still alive, the aggrieved party shall be free to invoke Arbitration.

11.5 Arbitration Agreement

11.5.1 This Agreement

- 1) This Arbitration Agreement (hereinafter referred to as this "Agreement") relating to this Contract (hereinafter called the "Main Agreement" for this agreement) is made under the provisions of The Arbitration and Conciliation Act, 1996 as amended from time to time and the rules thereunder (hereinafter called The Arbitration Act). This Agreement shall continue to survive termination, completion, or closure of the Main Agreement for 120 days after that.
- 2) Subject to aforesaid provisions, relevant clauses of the contract shall apply to the appointment of arbitrators and arbitration proceedings under this Agreement.
- 3) The Micro, Small and Medium Enterprises Development (MSMED) Act, 2006 provides parties to a dispute (where one of the parties is a Micro or Small Enterprise) to be referred to Micro and Small Enterprises Facilitation Council if the dispute is regarding any amount due under Section 17 of the MSMED Act, 2006. If a Micro or Small Enterprise, being a party to dispute, refers to the provisions in MSMED Act 2006, these provisions shall prevail over this Agreement.

11.5.2 Notice for Arbitration

- 1) **Authority to Appoint Arbitrator(s):** For this Arbitration Agreement 'The Appointing Authority', to appoint the arbitrator shall be Head of the Procuring Organisation named in the contract and includes if there be no such authority, the officer who is for the time being discharging the functions of that authority, whether in addition to other functions or otherwise.
- 2) In the event of any dispute as per GCC-clause 11.1 above, if the Adjudicator fails to decide within 60 days (as referred in 11.3 above), or the Conciliation is terminated (as referred in sub-clause 11.4 above) then, parties to the contract, after 60 days but within 120 days of 'Notice of Dispute'(clause 11.1 above) shall request the Appointing Authority through a "Notice for Arbitration" in writing requesting that the dispute or difference be referred to arbitration.
- 3) The "Notice for arbitration" shall specify the matters in question or subject of the dispute or difference indicating the relevant contractual clause, as well as the amount of claim item-wise.

11.5.3 Reference to Arbitration

After appointing Arbitrator(s), the Appointing Authority shall refer the Dispute to them. Only such dispute or difference shall be referred to arbitration regarding which the demand has been made, together with counter-claims or set off. Other matters shall be beyond the jurisdiction of Arbitrator(s)

11.5.4 Appointment of Arbitrator

1) Qualification of Arbitrators:

- (a) In the case of retired officers of The Procuring organisation, he shall have retired in the rank of Senior administrative grade (or equivalent) and shall have retired at least 1 years prior and must not be over 70 years of age on the date of Notice for arbitration.
- (b) He/ they shall not have had an opportunity to deal with the matters to which the contract relates or who, in the course of his/ their duties as officers of the Procuring Organisation, expressed views on any or all of the matters under dispute or differences. A certification to this effect (as per Format 1.4) shall be taken from Arbitrators. The proceedings of the Arbitral tribunal or the award made by such Tribunal shall, however, not be invalid merely for the reason that one or more arbitrators had in the course of his service, an opportunity to deal with the matters to which the contract relates or who in the course of his/ their duties expressed views on all or any of the matters under dispute.
- (c) An Arbitrator may be appointed notwithstanding the total no. of arbitration cases in which he has been appointed in the past.
- (d) Not be other than the person appointed by The Appointing Authority and that if for any reason that is not possible, the matter shall not be referred to arbitration at all.

2) Replacement of Arbitrators

If one or more of the arbitrators appointed as above refuses to act as arbitrator, withdraws from his office as arbitrator, or in the event of the arbitrator dying, neglecting/ unable or unwilling or refusing to act for any reason, or his award being set aside by the court for any reason, or in the opinion of The Appointing Authority fails to act without undue delay, the Appointing Authority shall appoint new arbitrator/ arbitrators to act in his/ their place in the same manner in which the earlier arbitrator/ arbitrators had been appointed. Such a re-constituted Tribunal may, at its discretion, proceed with the reference from the stage at which it was left by the previous arbitrator (s).

3) Appointment of Arbitrator:

- (a) In cases where the total value of all claims in question added together does not exceed Rs 50,00,000/- (Rupees Fifty Lakh only), the Arbitral Tribunal shall consist of sole Arbitrator. For this purpose, The Appointing Authority shall send to the contractor, within 60 days from the day of receipt of a written and valid notice for arbitration, a panel of at least four (4) names of retired officers, duly indicating their retirement dates.
- (b) The contractor shall be asked to nominate at least two names out of the panel for appointment as his nominee within 30 days from the dispatch date of the request by The Appointing Authority. The Appointing Authority shall appoint at least one out of them as the sole arbitrator within 30 days from the receipt of the names of the contractor's nominees.
- (c) In cases where the total value of all claims in question added together exceeds Rs 50,00,000/- (Rupees Fifty Lakh only), the Arbitral Tribunal shall consist of three (3) retired Officers of the Procuring Organisation. For this purpose, The Appointing Authority shall send a panel of at least four (4) names of such Officer(s) empanelled to work as Arbitrators duly indicating their retirement date to the contractor within 60 days from the day when a written and The Appointing Authority receives valid demand for arbitration.
- (d) The contractor shall be asked to nominate at least 2 names out of the panel for appointment as his nominee within 30 days from the dispatch date of the request by The Appointing Authority. The Appointing Authority shall appoint at least one out of them as the contractor's nominee. It shall also simultaneously appoint the balance number of arbitrators either from the panel or outside the panel, duly indicating the 'Presiding Arbitrator' from amongst the 3 arbitrators so appointed, within 30 days from the receipt of the names of Contractor's nominees.
- (e) If the contractor does not suggest his nominees for the arbitral tribunal within the prescribed timeframe, The Appointing Authority shall proceed for appointment of the arbitral tribunal within 30 days of the expiry of such time provided to the contractor.

11.5.5 Failure to appoint Arbitrators.

If The Appointing Authority fails to appoint an arbitrator within 60 (sixty) days, then subject to the survival of this Arbitration Agreement, in international commercial arbitration, the Supreme Court of India shall designate the arbitral institution for the appointment of arbitrators. In case of national arbitrations, the High Court shall designate arbitral institutions. The Arbitration Council of India must have graded these arbitration institutions. These arbitral institutions must complete the selection process within thirty days of accepting the request for the arbitrator's appointment.

11.5.6 The Arbitral Procedure

- 1) **Effective Date of Entering Reference:** The arbitral tribunal shall be deemed to have entered the reference on the date on which the arbitrator(s) have received notice of their appointment. All subsequent time limits shall be counted from such date.
- 2) **Seat and Venue of Arbitration:** The seat of arbitration shall be the place from which the Letter of Award or the contract is issued. The venue of arbitration shall be the same as the seat of arbitration. However, in terms of section 20 of The Arbitration Act, the arbitrator, at his discretion, may determine a venue other than the seat of the arbitration without in anyway affecting the legal jurisdictional issues linked to the seat of the arbitration.

- 3) If the Adjudication and/ or Conciliation mechanisms had not been exhausted before such reference to Arbitration, the Arbitrator should ask the aggrieved party to approach designated authority for such mechanisms before the Arbitration proceedings are started.
- 4) The claimant shall submit to the Arbitrator(s) with copies to the respondent his claims stating the facts supporting the claims along with all the relevant documents and the relief or remedy sought against each claim within 30 days from the date of appointment of the Arbitral Tribunal unless otherwise extension has been granted by Arbitral Tribunal.
- 5) On receipt of such claims, the respondent shall submit its defence statement and counter claim(s), if any, within 60 days of receipt of the copy of claims, unless otherwise extension has been granted by Arbitral Tribunal.
- 6) No new claim shall be added during proceedings by either party. However, a party may amend or supplement the original claim or defence thereof during arbitration proceedings subject to acceptance by the Tribunal having due regard to the delay in making it.
- 7) Statement of claims, counterclaims and defence shall be completed within six months from the effective reference date.
- 8) **Oral arguments to be held on a day-to-day basis:** Oral arguments as far as possible shall be heard by the arbitral tribunal on a day-to-day basis, and no adjournments shall be granted without sufficient cause. The arbitrator (s) may impose an exemplary cost on the party seeking adjournment without sufficient cause.
- 9) **Award within 12 (twelve) months:** The arbitral tribunal is statutorily bound to deliver an award within 12 (twelve) months from the date when the arbitral tribunal enters reference. The award can be delayed by a maximum of six months only under exceptional circumstances where all parties consent to such extension of time. The court's approval shall be required for further extension if the award is not made out within such an extended period. During the period of an application for extension of time is awaiting before the court, the arbitrator's proceedings shall continue until the disposal of the application.
- 10) **Fast Track Procedure:** The parties to arbitration may choose to opt for a fast-track procedure either before or after the commencement of the arbitration. The award in fast-track arbitration is to be made out within six months, and the arbitral tribunal shall be entitled to additional fees. The salient features of the fast-track arbitration are:
 - (a) The dispute is to be decided based on written pleadings only.
 - (b) Arbitral Tribunal shall have the power to call for clarifications in addition to the written pleadings where it deems necessary.
 - (c) An oral hearing maybe held only if all the parties request or the arbitral tribunal considers it necessary.
 - (d) The parties are free to decide the fees of the arbitrator(s) for fast-track procedure.
- 11) **Powers of Arbitral Tribunal to grant Interim Relief:** The parties to arbitration may approach the arbitral tribunal for seeking interim relief on the grounds available under section 9 of the act. The tribunal has the powers of a court while making interim awards in the proceedings before it.
- 12) **Confidentiality:** As provided in Section 42A of The Arbitration Act, all the details and particulars of the arbitration proceedings shall be kept confidential, excepting certain

situations like if the disclosure is necessary for the implementation or execution of the arbitral award.

- 13) **Obligation During Pendency of Arbitration:** Performance of the contract shall, unless otherwise directed by the Procuring Entity, continue during the arbitration proceedings, and no payment due or payable by the Procuring Entity shall be withheld on account of such proceedings, provided; however, it shall be open for Arbitral Tribunal to consider and decide whether or not the performance of the contract or payment therein should continue during arbitration proceedings.

11.5.7 The Arbitral Award

- 1) In the case of the Tribunal, comprising of three members, any ruling on award shall be made by a majority of members of the Tribunal. In the absence of such a majority, the views of the Presiding Arbitrator shall prevail.
- 2) The arbitral award shall state item-wise the sum and reasons upon which it is based. The analysis and reasons shall be detailed enough so that the award can be inferred from it.
- 3) It is further a term of this arbitration agreement that where the arbitral award is for the payment of money, no interest shall be payable on whole or any part of the money for any period till the date on which the award is made in terms of Section 31 (7) (a) of The Arbitration Act.
- 4) The award of the arbitrator shall be final and binding on the parties to this contract.
- 5) A party may apply for corrections of any computational errors, typographical or clerical errors, or any other error of similar nature occurring in the award or interpretation of a specific point of the award to the Tribunal within 60 days of receipt of the award.
- 6) A party may apply to the Tribunal within 60 days of receiving the award to make an additional award as to claims presented in the arbitral proceedings but omitted from the arbitral award.

11.5.8 Savings

The Arbitral Tribunal shall decide any matter related to Arbitration not covered under this Arbitration Agreement as per the provisions of The Arbitration Act.

11.5.9 Cost of Arbitration and fees of the Arbitrator(s)

- 1) The concerned parties shall bear the cost of arbitration in terms of section 31 (A) of The Arbitration Act. The cost shall inter-alia include fees of the Arbitrator. Further, the fees payable to the Arbitrator shall be governed by instructions issued on the subject by the Procuring Entity and/ or the Government from time to time, in line with the Arbitration and Conciliation Act, irrespective of the fact whether the Arbitrator is appointed by the Procuring Entity or the Government under this clause or by any court of law unless directed explicitly by Hon'ble court otherwise on the matter. A sole arbitrator shall be entitled to a 25% extra fee over such a prescribed fee.
- 2) The arbitrator shall be entitled to a 50 percent extra fee if the award is made within 6 months in terms of provisions contained in section 29(A) (2) of The Arbitration Act.
- 3) Besides the above, Arbitrator shall also be entitled to this extra fee in cases where Fast Track Procedure in terms of section 29 (B) of The Arbitration Act is followed.

12. Defaults, Breaches, Termination, and closure of Contract

12.1 Termination due to Breach, Default, and Insolvency

12.1.1 Defaults and Breach of Contract

In case the contractor undergoes insolvency or receivership; neglects or defaults, or expresses inability or disinclination to honour his obligations relating to the performance of the contract or ethical standards or any other obligation that substantively affects the Procuring Entity's rights and benefits under the contract, it shall be treated as a breach of Contract. Such defaults could include inter-alia:

- 1) **Default in Performance and Obligations:** if the contractor fails to deliver any or all of the Goods or fails to perform any other contractual obligations (including Code of Integrity or obligation to maintain eligibility and Qualifications based on which contract was awarded) within the period stipulated in the contract or within any extension thereof granted by the Procuring Entity.
- 2) **Insolvency:** If the contractor being an individual or if a firm, any partner thereof, shall at any time, be adjudged insolvent or shall have a receiving order or order for the administration of his estate made against him or shall take any proceeding for composition under any Insolvency Act for the time being in force or make any conveyance or assignment of his effects or enter into any assignment or composition with his creditors or suspend payment or if the firm be dissolved under the Partnership Act, or
- 3) **Liquidation:** if the contractor is a company being wound up voluntarily or by order of a Court or a Receiver, Liquidator or Manager on behalf of the Debenture-holders is appointed, or circumstances shall have arisen which entitle the Court or Debenture-holders to appoint a Receiver, Liquidator or Manager

12.1.2 Notice for Default:

As soon as a breach of contract is noticed, a show-cause 'Notice of Default' shall be issued to the contractor, giving two weeks' notice, reserving the right to invoke contractual remedies. After such a show-cause notice, all payments to the contractor would be temporarily withheld to safeguard needed recoveries that may become due on invoking contractual remedies.

12.1.3 Terminations for Default

- 1) **Notice for Termination for Default:** In the event of unsatisfactory resolution of 'Notice of Default' within two weeks of its issue as per sub-clause above, the Procuring Entity, if so decided, shall by written Notice of Termination for Default sent to the contractor, terminate the contract in whole or in part, without compensation to the contractor.
- 2) Such termination shall not prejudice or affect the rights and remedies, including under sub-clause below, which have accrued and/ or shall accrue to the Procuring Entity after that.
- 3) Unless otherwise instructed by the Procuring Entity, the contractor shall continue to perform the contract to the extent not terminated.
- 4) All warranty obligations, if any, shall continue to survive despite the termination.

12.1.4 Contractual Remedies for Breaches/Defaults or Termination for Default

If there is an unsatisfactory resolution within this period, the Procuring Entity shall take one; or more of the following contractual remedies.

- 1) Temporary withhold payments due to the contractor till recoveries due to invocation of other contractual remedies are complete.
- 2) Call back any loaned property or advances of payment, if any, with the levy of interest at the prevailing rate(MIBID - Mumbai Interbank Bid Rate).
- 3) Recover liquidated damages and invoke denial clause for delays.
- 4) Encash and/ or Forfeit performance or other contractual securities.
- 5) Prefer claims against insurances, if any.
- 6) Terminate contract for default, fully or partially including its right for Risk-and-Cost Procurement as per following sub-clause.
- 7) **Risk and Cost Procurement:** In addition to termination for default, the Procuring Entity shall be entitled, and it shall be lawful on his part, to procure Goods similar to those terminated, with such terms and conditions and in such manner as it deems fit at the "Risk and Cost" of the contractor. Such 'Risk and Cost Procurement' must be contracted within six months from the breach of Contract. The Contractor shall be liable for any loss which the Procuring Entity may sustain on that account provided the procurement, or, if there is an agreement to procure, such agreement is made. The Contractor shall not be entitled to any gain on such procurement, and the manner and method of such procurement shall be in the entire discretion of the Procuring Entity. It shall not be necessary for the Procuring Entity to notify the contractor of such procurement. It shall, however, be at the discretion of the Procuring Entity to collect or not the security deposit from the firm/ firms on whom the contract is placed at the risk and cost of the defaulted firm.

Note: Regarding the Goods which are not readily available in the market and where procurement difficulties are experienced, the period for making risk procurement shall be nine months instead of six months provided above.

- 8) Initiate proceedings in a court of law for the transgression of the law, tort, and loss, not addressable by the above means.

12.1.5 Limitation of Liability

Except in cases of criminal negligence or wilful misconduct, the aggregate liability of the contractor to the Procuring Entity, whether under the contract, in tort or otherwise, shall not exceed the total Contract Price, provided that this limitation shall not apply to the cost of repairing or replacing defective equipment, or to any obligation of the contractor to indemnify the Procuring Entity concerning IPR infringement.

12.2 Termination for Default/ Convenience of Procuring Entity and Frustration

12.2.1 Notice for Determination of Contract

- 1) The Procuring Entity reserves the right to terminate the contract, in whole or in part for its (the Procuring Entity's) convenience or frustration of contract as per sub-clause below, by serving written 'Notice for Determination of Contract' on the contractor at any time during the currency of the contract. The notice shall specify that the termination is for the

convenience of the Procuring Entity or the frustration of the contract. The notice shall also indicate inter-alia, the extent to which the contractor's performance under the contract is terminated, and the date with effect from which such termination shall become effective.

- 2) Such termination shall not prejudice or affect the rights and remedies accrued and/ or shall accrue after that to the Parties.
- 3) Unless otherwise instructed by the Procuring Entity, the contractor shall continue to perform the contract to the extent not terminated.
- 4) All warranty obligations, if any, shall continue to survive despite the termination.
- 5) The Goods and incidental Works/Services that are complete and ready in terms of the contract for delivery and performance within thirty days after the contractor's receipt of the notice of termination shall be accepted by the Procuring Entity as per the contract terms. For the remaining Goods and incidental Works/ Services, the Procuring Entity may decide:
 - (a) To get any portion of the balance completed and delivered at the contract terms, conditions, and prices; and/ or
 - (b) To cancel the remaining portion of the Goods and incidental Works/ Services and compensate the contractor by paying an agreed amount for the cost incurred by the contractor, if any, towards the remaining portion of the Goods and incidental Works/ Services.

12.2.2 Frustration of Contract

- 1) **Notice of Frustration Event:** Upon a supervening cause occurring after the effective date of the contract, including a change in law, beyond the control of either party whether as a result of the Force Majeure clause or within the scope of section 56 of the Indian Contract Act, 1872, that makes it impossible to perform the contract within a reasonable timeframe, the affected party shall give a 'Notice of Frustration Event' to the other party giving justification. The parties shall use reasonable efforts to agree to amend the contract, as may be necessary to complete its performance. However, if the parties cannot reach a mutual agreement within 60 days of the initial notice, the Procuring Entity shall issue a 'Notice for Determining the contract' and terminate the contract due to its frustration as in the sub-clause above.
- 2) However, the following shall not be considered as such a supervening cause.
 - (a) Lack of commercial feasibility or viability or profitability or availability of funds
 - (b) if caused by either party's breach of its obligations under this Contract or failure to act in good faith or use commercially reasonable due diligence to prevent such an event.

12.3 Closure of Contract

12.3.1 No Claim Certificate and Release of Contract Securities

After mutual reconciliations of outstanding payments and assets on either side, the contractor shall submit a 'No-claim certificate' to the Procuring Entity requesting the release of its contractual securities, if any. The Procuring Entity shall release the contractual securities without any interest if no outstanding obligation, asset, or payments are due from the contractor. The contractor shall not be entitled to make any claim whatsoever against the Procuring Entity under or arising out of this Contract, nor shall the Procuring Entity entertain or consider any such claim, if made by the contractor, after he shall have signed a "No Claim" Certificate in favour of the Procuring Entity. The Contractor

shall be debarred from disputing the correctness of the items covered by the "No Claim" Certificate or demanding a clearance to arbitration in respect thereof.

12.3.2 Closure of Contract

The contract shall stand closed upon

- 1) successful performance of all obligations by both parties, including completion of warrantee obligations and final payment.
- 2) termination and settlements after that, if any, as per GCC-clause 12.1 or 12.2 above.

13. Code of Integrity in Public Procurement; Misdemeanours and Penalties

13.1 Code of Integrity

Procuring authorities as well as bidders, suppliers, contractors, and consultants - should observe the highest standard of ethics and should not indulge in following prohibited practices, either directly or indirectly, at any stage during the Tender Process or during the execution of resultant contracts:

- 1) **"Corrupt practice"** - making offer, solicitation or acceptance of a bribe, reward or gift or any material benefit, in exchange for an unfair advantage in the Tender Process or to otherwise influence the Tender Process;
- 2) **"Fraudulent practice"** - any omission or misrepresentation that may mislead or attempt to mislead so that financial or other benefits may be obtained or an obligation avoided. Such practices include a false declaration or false information for participation in a tender process or to secure a contract or in the execution of the contract;
- 3) **"Anti-competitive practice"** - any collusion, bid-rigging or anti-competitive arrangement, or any other practice coming under the purview of the Competition Act, 2002, between two or more bidders, with or without the knowledge of the Procuring Entity, that may impair the transparency, fairness, and the progress of the Tender Process or to establish bid prices at artificial, non-competitive levels;
- 4) **"Coercive practice"** - harming or threatening to harm persons or their property to influence their participation in the Tender Process or affect the execution of a contract;
- 5) **"Conflict of interest"** –participation by a bidding firm or any of its affiliates who are either involved in the Consultancy Contract to which this procurement is linked; or if they are part of more than one bid in the procurement; or if their personnel have a relationship or financial or business transactions with any official of procuring entity who are directly or indirectly related to tender or execution process of contract; or improper use of information obtained by the (prospective) bidder from the Procuring Entity with an intent to gain unfair advantage in the Tender Process or for personal gain;
- 6) **"Obstructive practice"** - materially impede procuring entity's investigation into allegations of one or more of the above mentioned prohibited practices either by deliberately destroying, falsifying, altering; or by concealing of evidence material to the investigation; or by making false statements to investigators and/ or by coercive practices mentioned above, to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation; or by impeding the Procuring Entity's rights of audit or access to information;

13.2 Obligations for Proactive Disclosures:

- 1) Procuring authorities, bidders, suppliers, contractors, and consultants are obliged under this Code of Integrity to *suo-moto* proactively declare any conflict of interest (coming under the definition mentioned above - pre-existing or as and as soon as these arise at any stage) in any Tender Process or execution of the contract. Failure to do so shall amount to a violation of this code of integrity.
- 2) Any bidder must declare, whether asked or not in a bid-document, any previous transgressions of such code of integrity during the last three years or of being under any category of debarment by the Central Government or by the Ministry/ Department of the Procuring Organisation from participation in Tender Processes. Failure to do so shall amount to a violation of this code of integrity.

13.3 Misdemeanours and Penalties

The following shall be considered misdemeanours - if a bidder/ contractor either directly or indirectly, at any stage during the Tender Process or during the execution of resultant contracts:

- 1) commits any of the following misdemeanours:
 - (a) violates the code of Integrity mentioned in GCC-clause 13.1 or GCC-Clause 10.1.6(Fall clause) or the Integrity Pact if included in the Tender/ Contract;
 - (b) any other misdemeanour, e.g., supply of sub-standard quality of material/ services/ work or non-performance or abandonment of contract or failure to abide by 'Bid Securing Declaration'.
- 2) commits any of the following misdemeanours:
 - (a) has been convicted of an offence:
 - (i) under the Prevention of Corruption Act, 1988; or
 - (ii) the Indian Penal Code or any other law for the time being in force for causing any loss of life or property or causing a threat to public health as part of the execution of a public procurement contract.
 - (b) is determined by the Government of India to have doubtful loyalty to the country or national security consideration.
 - (c) Employs a government servant, who has been dismissed or removed on account of corruption or employs a non-official convicted for an offence involving corruption or abetment of such an offence, in a position where he could corrupt government servants or employs a government officer within one year of his retirement, who has had business dealings with him in an official capacity before retirement.

13.4 Penalties for Misdemeanours

Without prejudice to and in addition to the rights of the Procuring Entity to other remedies as per the Tender-documents or the contract, If the Procuring Entity concludes that a (prospective) bidder/ contractor directly or through an agent has committed a misdemeanour in competing for the tender or in executing a contract, the Procuring Entity shall be entitled, and it shall be lawful on his part to take appropriate measures, including the following:

13.4.1 if his bids are under consideration in any procurement

- 1) Enforcement of Bid Securing Declaration in lieu of forfeiture or encashment of Bid Security.

- 2) calling off of any pre-contract negotiations, and;
- 3) rejection and exclusion of Bidder from the Tender Process

13.4.2 if a contract has already been awarded

- 1) Termination of Contract for Default and availing all remedies prescribed thereunder;
- 2) Encashment and/ or Forfeiture of any contractual security or bond relating to the procurement;
- 3) Recovery of payments including advance payments, if any, made by the Procuring Entity along with interest thereon at the prevailing rate (MIBID - Mumbai Interbank Bid Rate);

13.4.3 Remedies in addition to the above:

In addition to the above penalties, the Procuring Entity shall be entitled, and it shall be lawful on his part to:

- 1) File information against Bidder or any of its successors, with the Competition Commission of India for further processing, in case of anti-competitive practices;
- 2) Initiate proceedings in a court of law against Bidder or any of its successors, under the Prevention of Corruption Act, 1988 or the Indian Penal Code or any other law for transgression not addressable by other remedies listed in this sub-clause.
- 3) Remove Bidder or any of its successors from the list of registered suppliers for a period not exceeding two years. Suppliers removed from the list of registered vendors or their related entities may be allowed to apply afresh for registration after the expiry of the period of removal.
- 4) Initiation of suitable disciplinary or criminal proceedings against any individual or staff found responsible.
- 5) Debar, a bidder/ contractor from participation in future procurements without prejudice to Procuring Entity's legal rights and remedies. Debarment shall automatically extend to all the allied firms of the debarred firm. In the case of Joint Venture/ consortium, all its members shall also stand similarly debarred:
 - (a) A Ministry/ Department (or any of its CPSUs, attached offices, autonomous bodies) may debar a bidder or any of its successors from participating in any Tender Process undertaken by all its procuring entities for a period not exceeding two years commencing from the date of debarment for misdemeanours listed in sub-clause GCC 13.3 -1) above. The Ministry/Department shall maintain such a list which shall also be displayed on their website.
 - (b) Central Government (Department of Expenditure (DoE), Ministry of Finance) may debar a bidder or any of its successors from participating in any Tender Process undertaken by all its procuring entities for a period not exceeding three years commencing from the date of debarment for misdemeanours listed in sub-clause GCC 13.3 - 2) above. DoE shall maintain such a list which shall be displayed on Central Public Procurement Portal (CPPP).

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Special Conditions of Contract (SCC)

Note for Bidders: Following Special Conditions of Contract (SCC) shall apply for this procurement. These Special Conditions shall modify/ substitute/ supplement the corresponding (GCC) clauses as indicated below. Whenever there is any conflict between the provision in the GCC and that in the SCC, the provision contained in the SCC shall prevail.

| GCC Clause No. | Topic | Modified/ replaced by SCC Provisions |
|----------------|-------|--------------------------------------|
|----------------|-------|--------------------------------------|

GCC 1, 2, 3 and 4: General, The Contract, Governing Laws and Jurisdiction, Communications

| | | |
|------------------------|---------------------------------|-----------------------------|
| GCC 1.1, 1.2, 1.3, 1.4 | Definitions and Abbreviations | <i>As stipulated in GCC</i> |
| GCC 2.1 | Language of Contract | <i>English</i> |
| GCC 2.5 | Contract Documents | <i>As stipulated in GCC</i> |
| GCC 3.1 | Governing Laws and jurisdiction | <i>As stipulated in GCC</i> |
| GCC 4.1, 4.3 | Communications and notices | <i>As stipulated in GCC</i> |

GCC 4.2 Persons Signing Communications *As stipulated in GCC*

GCC 5: Contractor's Obligations and Restrictions on its Rights

| | | |
|----------|---|---|
| GCC 5.7 | Confidentiality and Secrecy of information | <i>As stipulated in GCC</i> |
| GCC 5.8 | Performance Bond/ Security | <i>Performance Security shall be generated in favour of Establishment and Account Officer, Tamilnadu, Pondicherry and Andaman & Nicobar Island Geo-spatial Directorate, Chennai.</i> |
| GCC 5.10 | Book Examination Clause | <i>This clause would not apply to this procurement.]</i> |
| GCC 5.11 | Custody and Return of the Procuring Entity's Materials/ Equipment/ Documents loaned to Contractor | <i>No asset will be loaned to contractor.</i> |
| GCC 5.12 | Compliance with Labour Codes | <i>As stipulated in GCC clause 5.12.</i> |

GCC 6: Scope of Supply and Technical Specifications

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| GCC 6.1, 6.6 | Incidental Works/ Services, Spares | <ol style="list-style-type: none"> 1. <i>All work incidental to Installation, commissioning, Testing of GNSS receiver, other equipment's and peripherals at CORS Stations and Control Center as stipulated in Technical Specifications,</i> 2. <i>Training for operation and regular upkeep for supplied equipment, and</i> |
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| | | <p>3. <i>Operation and Maintenance support for 5 year from date of acceptance.</i></p> <p>4. <i>Incidental service also includes establishment of power and communication mechanism at CORS stations for real time data transmission and recurring charges for same during support period.</i></p> <p>5. <i>Identification and Rectification of any fault GNSS receiver, Antenna, Power Supply and Communication line appliances and subcomponents incidental to proper functioning of these systems.</i></p> |
| GCC 6.3 | Quantity Tolerance | <i>As stipulated in GCC clause 6.3.</i> |
| GCC 6.4 | Country of Origin and Minimum Local Content | <i>As stipulated in GCC clause 6.4.</i> |
| GCC 6.5 | Option Quantity Clause | <i>Option Quantity Clause is applicable; increase or decrease the ordered quantity upto 25 percentage</i> |
| GCC 6.6 | Spares in Supply of Equipment | <i>This is a Contract for the supply of Capital Goods/ Machinery & Plant. Obligation of spare parts need to be discharged as per GCC during operation support period.</i> |
| GCC 6.7 | Warranty/ Guarantee | Warranty/ Guarantee clause shall apply for 60 months from the date of acceptance of installation and commissioning of Goods. Delivery of goods on site will not be construed as start of Warranty/ Guarantee period. In case of any rectification of a defect or replacement of any defective Goods during the warranty period, the warranty for the rectified/ replaced Goods shall remain till the original warranty period. i.e. 60 months from the date of acceptance of installation and commissioning of original Goods. |

GCC 7 and 8: Inspection, Quality Assurance, Packing, Transportation, Insurance and Receipt

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| GCC 7.1 | Tests and Inspections | <i>No unique pre-production samples or type testing is required</i> |
| GCC 8. | Packing, Transportation and Receipt | <i>As stipulated in GCC</i> |

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| GCC 8.4.4 | Distribution of Despatch Documents | <i>As stipulated in GCC</i> |
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GCC 9: Terms of Delivery and Delays

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|----------|-----------------------|--|
| GCC 9.5 | Part shipment allowed | <i>As stipulated in GCC 9.5</i> |
| GCC 9.12 | Liquidated Damages | <p><i>In addition to clauses stipulated in GCC 9.12</i></p> <ol style="list-style-type: none"> 1. The Procuring Entity shall, without prejudice to other rights and remedies under the contract, recover as damages for the shortfall in performance, but not as a penalty, @ Rs 5000/- per station per day, over period in which data remains unavailable,, If the contractor fails to repair or restore real time Data stream from CORS station within 48 hrs from time of reporting, without having to prove actual loss incurred. 2. The Procuring Entity shall, without prejudice to other rights and remedies under the contract, recover as damages for the shortfall in performance, but not as a penalty, @ Rs 15000/- per station per month, for calendar month in which real time Data stream from CORS station will have less than 95% uptime, without having to prove actual loss incurred. 3. Procuring Entity shall, without prejudice to other rights and remedies under the contract, recover as damages for the shortfall in performance, but not as a penalty, @ Rs 5000/- per station per day, over period in which data remains unavailable, If contractor failed to ensure more than 95% data availability at 1 second epoch computed on daily basis, without having to prove actual loss incurred. |

GCC 10: Prices and Payments

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| GCC 10.1.5 | Price Variations | <i>No price adjustment</i> |
| GCC 10.1.6 | Fall Clause | <i>This clause would not apply to this procurement.</i> |
| GCC 10.2 | Taxes and Duties | <i>[As stipulated in GCC</i> |
| GCC 10.3.1, 10.3.2 | Terms and Mode of payments | (i) Advance payment of Twenty (20) % of total contract price including total GST amount shall be paid to supplier on submission of |

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| | | <p>irrevocable Bank Guarantee valid for 1 year from date of signing contract, of an equivalent amount from a nationalized bank or all Commercial scheduled bank in the prescribed format. And Full amount of advance payment will be amortized at the payment stage (ii) and (iii) given below, as applicable.</p> <p>(ii) Twenty Five (25) % of the total contract price including total GST amount shall be paid within thirty (30) days on completion of following Works, against report of said effect from Purchaser's representative</p> <p>a) On completion of work under BoQ SI 1 "Upgradation/Installation Software Solutions pertaining to Control Center" sub head A & B excluding Comprehensive on-site full operational, repair and maintenance support; and</p> <p>b) On completion of work under BoQ SI 2 "Upgradation of Existing CORS stations at rooftop" sub head A, B, D & G, at 80% sites.</p> <p>50% of advance payment made in accordance with point (i) (i.e. 10% of total contract price), shall be adjusted while releasing payment at this stage.</p> <p>(iii) Twenty Five (25) % of the total contract price including total GST amount shall be paid within thirty (30) days on completion of work under BoQ SI 3 "Shifting and Upgradation of Existing CORS stations to Ground Stations and their upgradation" sub head A, B, C, E & H at 80% sites, against report of said effect from Purchaser's representative. 50% of advance payment made in accordance with point (i) (i.e. 10% of total contract price), shall be adjusted while releasing payment at this stage. And</p> <p>(iv) On Final Acceptance: Thirty (30) % of the Contract Price including total GST shall be paid within thirty (30) days on submission of report from Purchaser's representative regarding successful completion of all work under contract excluding Comprehensive</p> |
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| | | <p>on-site full operational, repair and maintenance support as given under BoQ SI 2F, 3G and 4G.</p> <p>(v) Completion of each year of comprehensive operational and maintenance period: (Twenty) 20 % of the Contract Price including total GST amount charged in Invoice against operation and Maintenance shall be paid on pro rata basis annually @ 4 (four)% per year for 5 years within thirty (30 days) on submission of certificate of successful completion of respective operation and Maintenance year wise issued by purchaser.</p> <p>(vi) Start of operation and Maintenance year shall be counted for above payment term, from date of issuance of certificate for payment under sl (ii) and (iii) above, issued by the Purchaser's representative.</p> <p>(vii) If in a case, out of 31 stations under SI 3 of BoQ i.e. Shifting and Upgradation of Existing CORS stations to Ground Stations, one or more site for installation of CORS receiver station could not be made available to contractor within 90 days from date of signing of contract, requirement under Sub head A i.e. Site Preparation and Monumentation for such stations will be dropped from contract as well as from payment term under sl iii, iv and v above.</p> <p>(viii) If in a case, out of 5 stations under SI 4 of BoQ i.e. Supply and Installation of new CORS stations to Ground Stations, one or more site for installation of CORS receiver station could not be made available to contractor within 120 days from date of signing of contract, requirement under sl 4 of BoQ for such stations will be severed from payment term under sl iv & v above. Payment of such stations will be made on prorata basis for sub head A,B,C,D E & F after completion of task mentioned under said subheads and Payment for sub head G</p> |
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| | | <p>& H will be done from date of acceptance of such activity in mutually agreed terms.</p> <p>(ix) If in spite of reasonable effort, Contractor is not able to provide power and/or communication lines at one or more site as envisaged under sub head C & E of SI 2 of BoQ, sub head D & F of SI 3 of BoQ and D & F of SI 4 of BoQ, due to unavailability of such services in vicinity of Station (i.e. within 1 km of station), such requirement for respective site will be dropped from contract on submission of sufficient documentary evidence and payment of dropped work, as quoted in price schedule, shall be removed from contract price.</p> <p>(x) Payment of Local Taxes such as GST will be against valid Invoice as per GST ACT & Rules and submission of GST Registration Certificate along with declaration that "GST Registration is valid and all liabilities towards GST have been discharged by the vendor". GST amount will be paid within 30 days of submission of valid Invoice and all required documents and declaration by vendor.</p> <p>(xi) For all the payments to be made, against Bank guarantees, the bank guarantee shall be issued by a Scheduled Indian Bank or a foreign bank located in India. The guarantees issued by other banks should be confirmed by a Scheduled Indian Bank or a foreign bank operating in India.</p> <p>(xii) Bank guarantees for advance payment shall be released not later than 30 days after complete adjustment of advance payment in subsequent payment stages.</p> |
| GCC 10.3.3 | Payment Conditions | <i>As stipulated in GCC</i> |
| GCC 10.3.4 | Advance Payment | Advance/ mobilization Payment will be made as per para (i) of GCC 10.3.1 |

GCC 11, 12: Resolution of Disputes, Code of Integrity, Misdemeanours and Penalties

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|----------|------------------|-----------------------------|
| GCC 11.2 | Excepted Matters | <i>As stipulated in GCC</i> |
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| | | |
|---------------|------------------------|-----------------------------|
| GCC 11.5 | Arbitration Agreement | <i>As stipulated in GCC</i> |
| GCC 12.1.4-7) | Risk and Cost Purchase | <i>As stipulated in GCC</i> |

Service Level Agreement

FOR COMPREHENSIVE ANNUAL MAINTENANCE CONTRACT OF

CORS INFRASTRUCTURES

1. Preamble

- A. Comprehensive Annual Maintenance of CORS Infrastructure Service Contracts placed through GeM shall be governed by the following set of Terms and Conditions:
 - a. General terms and conditions for Goods and Services (“GTC”).
 - b. Service Specific Terms and Conditions (“STC”) contained in this document
 - c. BID / Reverse Auction specific Additional Terms and Conditions (“ATC”) as specified by the Buyer
- B. The above terms and conditions are in reverse order of precedence i.e. ATC supersedes Service specific STC which supersede GTC, whenever there are any conflicting provisions.
- C. This document represents the Special Terms and Conditions (STC) and the Service Level Agreement (SLA) governing the Contract between the Buyer and Service Provider. The purpose of this document is to outline the scope of work, Stakeholder’s obligation and terms and conditions of all services covered as mutually understood by the stakeholders.

2. Objectives and Goal

The objective of this document is to ensure that all the special terms and conditions are in place to ensure consistent delivery of services to the Buyer by the Service Provider. The goal of this document is to:

- Provide clear reference to service ownership, accountability, roles and responsibilities of both parties.
- Present a clear, concise and measurable description of services offered to the Buyer.
- Establish terms and conditions for all the involved stakeholders, it also includes the actions to be taken in case of failure to comply with conditions specified.
- To ensure that both the parties understand the consequences in case of termination of services due to any of the stated reasons.

This document will act as a reference document that both the parties have understood the above-mentioned terms and conditions and have agreed to comply by the same.

3. Stakeholders

The main stakeholders associated are:

- a. Buyer: The Buyer is responsible to provide clear instructions, approvals and timely payments for the services availed as per the Contractual terms.
- b. Service Provider: The Service Provider is responsible to provide all the required services in a timely manner and to the satisfaction of Buyer or its authorized representative. The Service Provider may also include seller/ supplier/ bidder/ Contractor, any authorized agents, permitted assignees, successors and nominees as per the context and as described in the document.

The responsibilities and obligations of the stakeholders have been outlined in this document. The document also encompasses payment terms and deduction in case of non-adherence to the defined terms and conditions.

4. Service Scope

4.1 Introduction

Comprehensive Annual Maintenance Contract of CORS Infrastructure is undertaken in order to utilize the maximum potential of the asset. Regular checking of parameters is required for the smooth operation of the CORS Infrastructure. All measures should be taken to operate the Infrastructure satisfactorily.

4.2 Scope of Work

- i. Preventive / Routine Maintenance and Breakdown Maintenance and overhaul schedules of CORS Infrastructure.
- ii. Maintenance and repair of all Infrastructure systems, equipment, components, etc., in accordance with the Contract, recommendations of OEM, and approved Maintenance Plan and Procedure so as to ensure long term safe and reliable maintenance of Infrastructure and its equipment
- iii. Periodic maintenance of all civil, electrical and ICT components
- iv. Responsibility to maintain CORS Infrastructure equipment in a healthy state all the time, to plan and undertake preventive maintenance of CORS Infrastructure at regular intervals and attend routine maintenance activity and other additional required duties mentioned in the bid.
- v. The contract shall be on comprehensive basis, inclusive of repairs and replacement of spare without any extra payments. The AMC Vendor shall carry out preventive maintenance Services (PMS) on quarterly basis as per requirement of contract .Parts so replaced should be new and genuine OEM parts or as prescribed by OEM in their Service Manual
- vi. A separate logbook should be maintained to record the preventive maintenance carried out for equipment. The AMC Vendor must submit the preventive maintenance report along with satisfactory service report from the user to designated authority of buyer for record and SLA compliance. The scope of Annual Comprehensive Maintenance Service covers upkeep & smooth working of the equipment within the premises of CORS stations as per laid down SLA and other provisions contained in the agreement document.
- vii. Service provider should deploy trained, experienced and competent service engineer for carrying out necessary maintenance services for the equipment as per benchmarked maintenance practices / OEM manuals and to provide efficient engineering services in the user premises. Continuous efforts should be made by SPA to minimise the down time of the equipment as a part of the duties of the service provider agency. The SPA shall ensure that all equipment are maintained at optimum operating levels. All scheduled maintenance required for the upkeep of the equipment will be carried by the Service Providers and for this all the necessary & adequate tools / instruments will be provided by the service provider itself to the engineers responsible for upkeep of equipment at user's premises.

5. Terms and Conditions

5.1 Buyer's Obligations

- i. The Buyer shall nominate a Nodal Officer/Engineer in-Charge from its organization to coordinate with the Service Provider to facilitate operation and maintenance of the CORS Infrastructure.
- ii. Buyer Department shall ensure that the Service Provider gets the required access to location/ operational areas/ rooms for providing the services as per installation of equipment.
- iii. This preferable that Buyer should mention the correct model numbers of equipment / spare parts cat part id etc to the service provider for more effective service rendering.
- iv. Buyer should also mention history of previous major break downs and repairs to the service provider for more clarity and for efficient execution of service contract

5.2 Standard Service Provider Obligations

- i. The Service Provider shall ensure that the level of service provided is of the highest professional standard and shall ensure full compliance to the terms and conditions of the Contract.
- ii. A complaint escalation matrix is to be provided by Service Provider.
- iii. The Service Provider shall attend to emergency works in a time bound manner as specified by the Buyer. No extra payment will be made for working on odd hours for emergency works.
- iv. The SPA would put asset number on each of the system being maintained by them. These should correspond to the number/s of equipments to be maintained in a separate register along with details of place where they are placed/located. If there is shifting of the equipment/s under this AMC, the SPA will have to make changes in record accordingly. Designated Officer in charge would assist the firm in this task and ensure this to be done under his supervision.
- v. Service Provider should deploy technically competent service engineer / engineers at to ensure proper upkeep of equipment and quick resolution of fault during the AMC period.
- vi. Complaint can be registered either telephonically or by e-mail or in person at helpdesk set by SPA at user premises by the service provider as per contractual requirement Proper record of the complaints should be maintained by the SPA /Support Engineer at each consignee location / user premises.
- vii. The Service Provider should use suitable instruments / tools to examine and repair the equipment. If required in bid document, service provider should also do the update / maintenance of operating system, software installation provided by user, installation of patches, configuration of applications (clients side) and updating of drivers etc.
- viii. The Service Provider is required to maintain the log sheet which will include number of services provided during the contract period with dates and part of the equipment got repaired or replaced, with its proper model number and necessary details.
- ix. The Service Provider must fulfil the requirement of number of preventive maintenance services if so required in the contract / e bid documents.
- x. The contractor will maintain the confidentiality of data stored in the systems. The contractor will be required to take appropriate actions in respect of his personnel to ensure the obligations of non-use and non-disclosure of confidential information.
- xi. The Service Provider will be required to submit a list of the manpower being deployed with photo ID, address proof, police verification certificate and

- educational qualifications before deputing the workers. The Service Provider shall be solely responsible for the credentials/ acts of his staff/workers.
- xii. The Service Provider shall provide at his own cost proper photo identity cards to the manpower deployed.
 - xiii. In an event that, for any reason, the manpower provided changes their contact number during the tenure of the Contract then the Service Provider will immediately notify the Buyer of the above change.
 - xiv. The persons deployed by the Service Provider shall solely be the responsibility of the Service Provider and Buyers shall have no obligation for any sort of claims raised by the Service Provider's employees/personnel. For all intents and purposes, the Service Provider shall be the "Employer" within the meaning of different Labour Legislations in respect of manpower so employed and deployed in the Buyer's premises and shall be responsible to fulfil all obligations under applicable laws without any recourse to the Buyer.
 - xv. The Service Provider shall be liable for ensuring compliance with the provisions of all applicable laws including but not limited to Labour Law [Central/State] and specially Workmen Compensation Act, EPF Laws, ESI Laws, Income tax laws and Minimum Wages Laws, Contract Labour (Regulations Abolition Act), Pollution Control Board and any other relevant acts as may become applicable during the tenure of the Contract. The onus of compliance to all the applicable Laws/Acts/Rules shall rest with the Service Provider only and the Buyer will not be liable in any manner.
 - xvi. Any damages caused by the Service Provider in existing facilities while carrying out the work shall be made good by the Service Provider to Buyer's entire satisfaction at their own risk and cost.
 - xvii. The Service Provider shall, at all times, make and keep sufficient copies of the Drawings, Specifications etc. which are required by them to fulfil their duties under the Contract.
 - xviii. The Service Provider must leave work areas in a clean, tidy and safe condition at the end of each working period.
 - xix. The Service Provider shall provide and maintain at his own cost all lights, guards, fencing, warning signs and watching, wherever necessary or required by the Buyer or by any authority for the protection of the Works or for safety and convenience to the public or others, and take all reasonable steps to protect the environment on and off the site and to avoid damage or nuisance to persons or to property of the public or others resulting from pollution, noise or other causes arising as a consequence of his methods or repair.
 - xx. The Service Provider shall comply with all statutory requirements, including but not limited to those as specified above and shall keep the Buyer harmless and indemnified for any action brought against it for any violation/non-compliance of any of the Acts, etc.
 - xxi. The Service Provider shall at all times ensure that the services being provided under this Contract/ Agreement are performed strictly in accordance with all applicable laws, orders, bye-laws, regulations, rules, standards, recommended practices etc, and no liability in this regard will be attached to the Buyer
 - xxii. Insurance: The Service Provider shall take an insurance policy for all the employees employed by them against accidents and injuries while at work as required by the relevant rules and agreement clause. It shall be the obligation of the Service Provider to pay compensation, if any to his workmen as per Workmen's Compensation Act and any statutory modification and also in respect of any damage or compensation

payable in consequence of any accident or injury sustained by the workmen or other persons whether in the employment of Service Provider or not, if caused by the action of negligence on the part of the Service Provider. The Buyer will not share any responsibility or liability fully or partly on above. The decision of the Buyer in regard to fixing the responsibility for the accident will be final and binding. All costs on such insurance shall be deemed inclusive in price bid.

5.3 Service Specific Service Provider Obligations

- i. Regular software and firmware updation in GNSS receiver as well as in other electronic devices must be ensured.
- ii. The Service Provider must maintain all the records pertaining to any faults / failure / defect / breakdown / malfunctioning and replacement of any spare or consumables from the inventory.
- iii. Continuous monitoring of the performance of the CORS Infrastructure and regular/predictive maintenance of the whole system which are necessary for extracting and maintaining the optimum energy output from the CORS Infrastructure.
- iv. The Service Provider shall comply with the provision of all relevant acts of Central or State Governments including various Acts/Regulations pertaining to Labour, Electricity Act 2003, Grid Code, Metering Code, MNRE guide lines or any modification thereof or any other law relating whereto and rules made there under from time to time.
- v. The Service Provider will have to coordinate with ISP, Electricity distribution companies/agencies and other agencies for power and communication connection, their billing and uninterrupted services.
- vi. Timely payment of Electricity connection, Mobile SiM connections and Broadband/FC/ADSL connection to ensure uninterrupted services.
- vii. During the Contract period, the Service Providers need to maintain 95% uptime of the Infrastructure. Any major repair, replacement, overhauling, etc. are to be performed during weekend or at off hours so that it can minimally impact users.
- viii. Monitoring the performance of the CORS Infrastructure and regular maintenance of the whole system including GNSS equipment, communication equipment, power appliances, and their peripherals etc. are necessary for extracting and maintaining the maximum data output from the CORS Infrastructure.
- ix. Particular care shall be taken for exposed equipment/cables/fixtures to prevent corrosion during CAMC period.
- x. Cleaning of the solar panel electronic box, weeding out of grass in area under fenced premises, and pruning of nearby trees etc shall also be carried out regularly during CAMC period.
- xi. Periodic Painting of fencing and other metal parts of monument to prevent them from rusting shall also be carried out during CAMC period.
- xii. Periodic Replacement of batteries, filters, surge arrestors and other consumables shall also be carried out during CAMC period.

5.4 Safeguarding of proprietary and confidential information

- i. The Service Provider shall not carry and/or transmit any material, information, application details, equipment or any other goods/material in physical or electronic form, which are proprietary to or owned by Buyer, out of Buyer premises without prior written permission from Buyer.

- ii. Service Provider acknowledges that Buyer's business data and other Buyer's proprietary information or materials, whether developed by Buyer's or being used by Buyer pursuant to a license agreement with a third party (the foregoing collectively referred to herein as "proprietary information") are confidential and proprietary to Buyer; and Service Provider agrees to use reasonable care to safeguard the proprietary information and to prevent the unauthorized use or disclosure thereof, which care shall not be less than that used by Service Provider to protect its own proprietary information.
- iii. Ownership and retention of Documents: Buyer shall own the documents, prepared by or for the Service Provider arising out of or in connection with this Contract. Forthwith upon expiry or earlier termination of this Contract and at any other time on demand by Buyer, the Service Provider shall deliver to Buyer all documents provided by or originating from Buyer and all documents produced by or from or for the Service Provider in the course of performing the Services, unless otherwise directed in writing by Buyer at no additional cost.

5.5 Independent Contractors

The relationship between Buyer and Service Provider under this Contract is that of principal to principal basis and neither party shall have the power or authority to bind or obligate the other party except as expressly set forth in this Contract. Therefore, Service Provider nor the personnel of the Service Provider shall become the employee of the Buyer under this Contract. The Buyer shall also not be liable to the Service Provider nor its personnel, beyond the scope and the fees as mentioned in the STC. For the sake of clarity it is stated that Buyer shall not be responsible for any claim such as salary or allowances, bonus, compensation, damages or anything arising out of their employment/duty under this STC. The Service Provider shall make them known about this position in writing before deploying the personnel to the Buyer site. The Buyer shall in no way be responsible for the violation of any laws from the time being in force, either by the Service Provider or its employees.

6. SLA Deductions

| S.No | Description of default | Penalties/Deduction/Damages |
|------|---|--|
| 1. | Delay in repair/restoration of CORS station | The Procuring Entity shall, without prejudice to other rights and remedies under the contract, recover as damages for the shortfall in performance, but not as a penalty, @ Rs 5000/- per station per day, over period in which data remains unavailable, If the contractor fails to repair or restore real time Data stream from CORS station within 48 hrs from time of reporting, without having to prove actual loss incurred. |
| 2. | Downtime in real time data stream | The Procuring Entity shall, without prejudice to other rights and remedies under the contract, recover as damages for the shortfall in performance, but not as a penalty, @ Rs 15000/- per station per day, for calendar month in which |

| S.No | Description of default | Penalties/Deduction/Damages |
|------|---|--|
| | | <p>real time Data stream from CORS station will have less than 95% uptime, without having to prove actual loss incurred.</p> <p>The breakdown time will be worked out for each CORS as under:</p> <ul style="list-style-type: none"> Total Duration(X) = 3600*24*No. of calendar days in a month. Breakdowns (Y) = Cumulative Sum of breakdown duration of CORS stations under consideration in seconds during the month Percentage uptime= (X-Y)/X *100. |
| 3 | Unavailability of Rinex data | <p>Procuring Entity shall, without prejudice to other rights and remedies under the contract, recover as damages for the shortfall in performance, but not as a penalty, @ Rs 5000/- per station per day, over period in which data remains unavailable, If contractor failed to ensure more than 95% data availability at 1 second epoch computed on daily basis, without having to prove actual loss incurred.</p> <p>he Unavailability of Rinex data will be worked out for each CORS as under:</p> <ul style="list-style-type: none"> Total epochs(X) = 3600*24 Breakdowns (Y) = Cumulative Sum of epochs unavailable of CORS stations under consideration, during the day Percentage uptime= (X-Y)/X *100. |
| 4. | If cumulative deduction reaches 10% of the Contract value | Termination of Contract as per the discretion of the Buyer |

7. Payment Schedule

- i. The Payment Procedure shall be as specified in the General Terms and Conditions of GeM and the Payment Schedule will be as defined by the Buyer.
- ii. The payment will be made to the Service Provider as defined by the Buyer on submission of the bill by the Service Provider and after deducting deduction amount, if any.

Format 1.1: Bank Guarantee Format for Performance Security

To

The President of India, through
Surveyor General of India,
Survey of India,
Hathibarkhala Estate, Dehradun – 248001.

Whereas..... (name and address of the contractor) (hereinafter called “the contractor”) has undertaken, in pursuance of contract no date..... to supply (description of goods and Works/ Services) (hereinafter called “the contract”).

And Whereasyou have stipulated it in the said contract that the contractor shall furnish you with a bank guarantee by a Commercial bank for the sum specified therein as security for compliance with its obligations as per thecontract;

And Whereaswe have agreed to give the contractor such a bank guarantee.

Now Therefore we hereby affirm that we are guarantors and responsible to you, on behalf of the contractor, up to a total of(amount of the guarantee in words and figures), and we undertake to pay you, upon your first written demand declaring the contractor to be in default under the contract and without cavil or argument, any sum or sums within the limits of (amount of guarantee) as aforesaid, without your needing to prove or to show grounds or reasons for your demand or the sum specified therein.

We hereby waive the necessity of your demanding the sail debt from the contractor before presenting us with demand.

We further agree that no change or addition to or other modification of the terms of the contract to be performed thereunder or of any of the contract documents which may be made between you and the contractor shall in any way release us from any liability under this guarantee, and we hereby waive notice of any such change, addition, or modification.

This guarantee shall be valid until theday of20.....

Our.....branch at.....*(Name & Address of the*(branch) is liable to pay the guaranteed amount depending on the filing of a claim and any part thereof under this Bank Guarantee only and only if you serve upon us at our* branch a written claim or demand and received by us at our* branch on or before Dt..... otherwise, thebank shall be discharged of all liabilities under this guarantee after that.

(Signature of the authorized officer of the Bank)

.....
.....

Name and designation of the officer

.....

Seal, name & address of the Bank and address of Branch

*Preferably at the headquarters of the authority competent to sanction the expenditure for the procurement of goods or at the concerned district headquarters or the state headquarters.

Format 1.2: Non-Disclosure Agreement

[The successful Bidder shall fill in this form in accordance with the instructions indicated]

THIS AGREEMENT is made on

the *[insert: **number**]* day of *[insert: **month**]*, *[insert: **year**]*.

BETWEEN

- (1) *[insert complete name of Purchaser]*, a *[insert description of type of legal entity, for example, an agency of the Ministry of of the Government of {insert name of Country of Purchaser}, or corporation incorporated under the laws of {insert name of Country of Purchaser}]* and having its principal place of business at *[insert address of Purchaser]* (hereinafter called “Disclosing Party”), and
- (2) *[insert name of Supplier]*, a corporation incorporated under the laws of *[insert: country of Supplier]* and having its principal place of business at *[insert: address of Supplier]* (hereinafter called “Receiving Party”).

WHEREAS the Purchaser invited bids for certain SUPPLY, INSTALLATION, OPERATIONALIZING AND MAINTENANCE OF CONTINUOUSLY OPERATING REFERENCE STATION (CORS) NETWORK in, *[insert region]* (hereinafter called “Work”), and has accepted a Bid by the Supplier for the supply, installation, operationalizing and maintenance of said CORS Network.

AND WHEREAS the Parties contemplate that with respect to the work, certain data, information, material and documents as well as Disclosing Party’s business, assets, financial condition, operations, plans and/or prospects of businesses, may be shared by Disclosing Party or may be generated/collected/acquired/gathered during course of the work by Receiving Party, (hereinafter referred to as “**Confidential Information**”, more fully detailed in clause 1 herein below), that Disclosing Party regards as proprietary and confidential; and

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:

1. “**Confidential and or proprietary Information**” shall mean and include any information disclosed by Disclosing Party to the Receiving Party either directly or indirectly, in writing, orally, by inspection of tangible objects (including, without limitation, documents, prototypes, samples, media, documentation, discs and code) or generated/gathered/collected/acquired by the Receiving Party during the course of the work through hardware/software supplied, installed and commissioned in the work. Confidential information shall include, without limitation, any materials, data, trade secrets, network information, configurations, trademarks, brand name, know-how, business and marketing plans, financial and operational information, and all other non-public information, material or data relating to the current and/ or future business and operations of the Disclosing Party and analysis, compilations, studies, summaries, extracts or other documentation prepared by the Disclosing Party

or prepared by Receiving party for Disclosing Party. Confidential Information may also include information disclosed to the Receiving Party by third parties on behalf of the Disclosing Party.

2. The Receiving Party shall refrain from disclosing, reproducing, summarizing, and/or distributing Confidential Information and confidential materials of the Disclosing Party except in connection with the Work.
3. The Receiving Party will not export or sell, directly or indirectly, any technical data acquired from Disclosing Party or generated/gathered/collected/acquired by the Receiving Party during the course of the work through hardware/software supplied, installed and commissioned in the work or any product utilizing any such data to any third party, without first obtaining approval of the Disclosing Party.
4. The Receiving Party shall protect the confidentiality of Disclosing Party's Confidential Information in the same manner they protect the confidentiality of their own proprietary and confidential information of similar nature. Receiving Party, while acknowledging the confidential and proprietary nature of the Confidential Information, agrees to take all reasonable measures at its own expense to restrain its representatives from prohibited or unauthorised disclosure or use of the Confidential Information.
5. Confidential Information shall at all times remain the property of the Disclosing Party and may not be copied or reproduced by the Receiving Party without the Disclosing Party's prior written consent.
6. Within seven (7) days of a written request by the Disclosing Party, the Receiving Party shall return/destroy (as may be requested in writing by the Disclosing Party or upon expiry and or earlier termination) all originals, copies, reproductions and summaries of Confidential Information available with the Receiving Party as Confidential Information. The Receiving Party shall certify to the Disclosing Party in writing that it has satisfied its obligations under this paragraph.
7. The Receiving Party may disclose the Confidential Information only to the Receiving Party's employees and consultants on a need-to-know basis. The Receiving Party shall have executed or shall execute appropriate written agreements with third parties, in a form and manner sufficient to enable the Receiving Party to enforce all the provisions of this Agreement.
8. Confidential Information, however, shall not include any information which the Receiving Party can show:
 - i. is in or comes into the public domain otherwise than through a breach of this Agreement or the fault of the Receiving Party; or
 - ii. was already in its possession free of any such restriction prior to receipt from the Disclosing Party; or

- iii. was independently developed by the Receiving Party without making use of the Confidential Information; or
 - iv. has been approved for release or use (in either case without restriction) by written authorisation of the Disclosing Party.
9. In the event Receiving Party receives a summons or other validly issued administrative or judicial process under Indian laws requiring the disclosure of Confidential Information of the Disclosing Party, the Receiving Party shall promptly notify the Disclosing Party. The Receiving Party may disclose Confidential Information to the extent such disclosure is required by law, rule, regulation or legal process; *provided however*, that, to the extent practicable, the Receiving Party shall give prompt written notice of any such request for such information to the Disclosing Party, and agrees to co-operate with the Disclosing Party, at the Disclosing Party's expense, to the extent permissible and practicable, to challenge the request or limit the scope thereof, as the Disclosing Party may reasonably deem appropriate.
10. Receiving Party shall not use the Disclosing Party's name, trademarks, proprietary words or symbols or disclose under this Agreement in any publication, press release, marketing material, or otherwise without the prior written approval of the other.
11. Neither the execution of this Agreement nor the furnishing of any Information hereunder shall be construed as granting either expressly or by implication, any license under or title to any invention, patent, copyright, trademark or trade name now or hereafter owned by or controlled by the party furnishing the Information.
12. Receiving Party agrees that the conditions in this Agreement and the Confidential Information disclosed pursuant to this Agreement are of a special, unique, and extraordinary character and that an impending or existing violation of any provision of this Agreement would cause the Disclosing Party irreparable injury for which it would have no adequate remedy at law and further agrees that the Disclosing Party shall be entitled to obtain immediately injunctive relief prohibiting such violation, in addition to any other rights and remedies available to it at law or in equity.
13. The Receiving Party shall indemnify the Disclosing Party for all costs, expenses or damages that Disclosing Party incurs as a result of any violation of any provisions of this Agreement. This obligation shall include court, litigation expenses, and actual, reasonable attorney's fees. The Parties acknowledge that as damages may not be a sufficient remedy for any breach under this Agreement, the non-breaching party is entitled to seek specific performance or injunctive relief (as appropriate) as a remedy for any breach or threatened breach, in addition to any other remedies at law or in equity.

14. Disclosing Party shall not be liable for any special, consequential, incidental or exemplary damages or loss (or any lost profits, savings or business opportunity) regardless of whether Party was advised of the possibility of the damage or loss asserted.
15. Receiving Party agrees that by virtue of entering into this Agreement Disclosing Party is not obligated to disclose all or any of the Confidential Information to the other as stated in this Agreement. The Disclosing Party reserve the right to disclose only such information at its discretion and which it thinks, is necessary to disclose in relation to the Work.
16. This Agreement will be effective from the date of execution of this Agreement and shall continue to be effective till the Work is terminated by either Party by giving notice in accordance with contract agreement of work, in case either Party foresees that the Work would not be achieved.
17. Notwithstanding anything contained herein, the provisions of this Agreement shall survive and continue after expiration or termination of this Agreement for a further period of five year(s) from the date of expiration.
18. It being further clarified that notwithstanding anything contained herein, in case a binding agreement is executed between the Parties in furtherance of the Work, the terms and conditions of this Agreement shall become effective and form a part of that binding agreement and be co-terminus with such binding agreement and shall be in effect till the term of such binding agreement and shall after its expiry and or early termination shall continue to be in force in the following manner:
 - i. 5 (five) years after the termination of the binding agreement
 - ii. 5 (five) years after the expiry of the binding agreement(whichever is earlier)
19. If any provision of this agreement is held to be invalid or unenforceable to any extent, the remainder of this Agreement shall not be affected and each provision hereof shall be valid and enforceable to the fullest extent permitted by law. Any invalid or unenforceable provision of this Agreement shall be replaced with a provision that is valid and enforceable and most nearly reflects the original intent of the unenforceable provision.
20. The rights and obligations of the parties under this Agreement may not be sold, assigned or otherwise transferred (subject to contract).
21. This Agreement shall be governed by the laws of India. Both parties irrevocably submit to the exclusive jurisdiction of the Courts in New Delhi, for any action or proceeding regarding this Agreement. Any dispute or claim arising out of or in connection herewith, or the breach, termination or invalidity thereof, shall be settled by arbitration in accordance with the provisions of Procedure of the Indian Arbitration & Conciliation Act, 2015, including any amendments thereof. The arbitration tribunal shall be composed of a sole arbitrator, and such arbitrator shall be appointed mutually by the Parties. The

place of arbitration shall be New Delhi, India and the arbitration proceedings shall take place in the English language.

22. Additional oral agreements do not exist. All modifications and amendments to this Agreement must be made in writing.

IN WITNESS WHEREOF, THE PARTIES HERETO HAVE EXECUTED THIS CONFIDENTIALITY AGREEMENT IN ACCORDANCE WITH THE LAWS OF [INSERT THE NAME OF THE CONTRACT GOVERNING LAW COUNTRY] BY AFFIXING THE SIGNATURE OF THE AUTHORISED REPRESENTATIVES AS OF THE DATE HEREIN ABOVE MENTIONED.

For and on behalf of the Disclosing Party

Signed: *[insert signature of authorized representative(s) of the Disclosing Party]*
in the capacity of *[insert title or other appropriate designation]*
in the presence of *[insert identification of official witness]*

For and on behalf of the Receiving Party

Signed: *[insert signature of authorized representative(s) of the Receiving Party]*
in the capacity of *[insert title or other appropriate designation]*
in the presence of *[insert identification of official witness]*