

REQUEST FOR PROPOSAL DOCUMENT

For

**SUPPLY OF NAPIER GRASS
TO BARSANA BIOGAS PLANT,
BARSANA,
DIST-MATHURA, UTTAR PRADESH**

August 26, 2023

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1. INTRODUCTION

Adani TotalEnergies Biomass Ltd (ATBL) is a 100% subsidiary company of Adani Total Gas Ltd (ATGL). ATBL is engaged in the business of manufacturing, distribution, and sale of Bio-CNG, all types of fertilizer (solid and liquid), and CO₂, and owns facilities for the manufacturing, compression, storage, distribution, and supply of Bio-CNG, all types of fertilizer (solid and liquid), and CO₂, either by itself or through its Affiliates.

Adani Total Gas Limited (ATGL) is India's leading Private and Listed CGD Entity having 15+ years of experience in development, operation, and maintenance of City Gas Distribution Network and Catering to Domestic, Commercial and Industrial Customers through Piped Natural Gas and Serving the Automobile /Transport customers through CNG Stations. ATGL has setup 450+ CNG Stations. ATGL comprises of 33 Geographical areas (GA's) spread across 124 districts and currently serves around 0.7 million Piped Gas Customers. ATGL also signed SATAT Agreement on 20th November 2020.

ATBL is executing India's largest Bio-Gas plant in Barsana for feed capacity of 600 TPD (based on Paddy straw, Cattle dung and Pressmud) and is also planning to develop several additional plants in the near to medium term. Additionally, exploring other feedstocks like Napier grass which has a high content of easily digestible organic matter, along with high yields and the ability to withstand drought conditions. These qualities make it an excellent feedstock for anaerobic digestion processes. Furthermore, the use of Napier grass as a feedstock can help address the issue of uncertain feedstock procurement, as continuous and reliable supply to biogas plants.

2. REQUIREMENT

The required quantity of Napier Grass would be around 100 TPD (tons per day) in 1st Phase and gradually increased up to 300 TPD. ATBL invites bids to supply Napier Grass for Biogas project, Barsana, Mathura. The "Total Solid (TS)" shall be in the range of 25-32% in supplied Napier Grass which is essential for successful digestion and production of CBG.

3. SCOPE OF WORK

The scope for supply of Napier grass to Barsana Biogas plant not limited to right from farmer awareness & management, land identification, land lease/purchase, quality seed procurement, plantation, irrigation, maintenance, harvesting, manpower, machineries, loading, unloading, transportation, etc.

Final applicable structure for the payment of Napier grass delivered inside the Barsana Biogas plant premises shall be paid in Rs. / Ton (All above said scope included)

Case 1: Delivery at plant without shredding

The cultivated Napier grass of Max 12 ft in height to be delivered inside the plant premises without shredding.

Case 2: Delivery at plant in shredded form

The cultivated Napier grass of Max 12ft in height to be shredded less than 25 mm maximum in size and to be delivered inside the plant premises

4. QUALITY PARAMETERS

Napier grass is influenced due to variety/hybrids of grass, soil type, climatic conditions, nutrient management and cutting interval. The cutting interval to be key consideration factor for plant operation with efficient nutrient contents & high dry matter (DM) being retained.

The first cut shall be after three months of plantation and thereafter between every 50-60 days. Quality certificate to be provided from NABL accredited labs for every cutting interval that should be meet the minimum parameters prescribed as below: -

S. No	Parameters	Value	Unit
1	Total solids (DM)	25-32	%
2	Moisture	68-75	%
3	Volatile solids (OM)	Min 65	%

*Not only limited to above

ATBL would verify the above parameters with its plant in built / third party laboratories for every batch and authorized to reject if quality parameters are not as per requirement.

SUPPLY PERIOD


The bidder should ensure supply of Napier Grass as mentioned above for 5 years from the start of 1st supply to the plant. Upon successful completion of this period, the contract can be further extended to another period on terms mutually discussed and agreed.


The supplier shall start delivery of Napier Grass as against Notice to proceed (NTP) and tentative delivery schedule instructions updated from ATBL representative.

The bidder to submit the detailed proposal which includes but not limited to following:

- Company Profile and Experience
- Detailed supply chain modus operandi from farm to factory to ensure continuity in supply of Napier Grass at plant
- Availability / Back up of land parcels, Farmers, Equipment etc.
- Breed / Variety of Napier Grass which is intended to be supplied and the composition/properties /characteristics (including Expected Yield of Raw gas / Ton)
- Assumptions if any

Interested vendor should submit their detailed profile, credentials, order copies, CA certified financial statement as per requirement elaborated in below link

	Annexure-1		Schedule of Rates (Option 1)		
	Supplier Name			(Insert Company name here)	
			Initial quote on (Insert date here)		
S.No.	Item Description	Qty	UOM	Rate	Amount
Option 1	Delivery at plant without shredding	100	Ton/day		-
	Basic Price	INR			-
	GST	%		18%	-
	Total Price			-	
	Other Major Terms & Conditions				
	Delivery Schedule:	Weeks			
	Delivery Terms :				
	Payment Terms :				
	Performance BG :				
	Warrantees :				
	Liquidate Damages :				

		Annexure-1 Schedule of Rates (Option 2)			
	Supplier Name			(Insert Company name here)	
				Initial quote on (Insert date here)	
S.No.	Item Description	Qty	UOM	Rate	Amount
Option 2	Delivery at plant in shredded form	100	Ton/day		-
	Basic Price	INR			-
	GST	%		18%	-
	Total Price			-	
	Other Major Terms & Conditions				
	Delivery Schedule:	Weeks			
	Delivery Terms :				
	Payment Terms :				
	Performance BG :				
	Warrantees :				
	Liquidate Damages :				

Contact details of responsible People:
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GENERAL TERMS AND CONDITIONS (HIGH VALUE DOMESTIC SUPPLY)

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1. Definitions

- 1.1 Unless the context otherwise requires, the terms capitalized and used herein or in any other document which is part of the PO Documents and the defined terms set forth in this Clause 1, together with their respective grammatical variations and cognate expressions, shall have the meanings specified herein:

Acceptable Bank	shall mean a 'scheduled bank' in India (as set forth in the Second Schedule to the Reserve Bank of India Act, 1934), excluding any co-operative or gramin (rural) bank.
Additional Tests	shall have the meaning ascribed to the term in Clause 19.4.
Advance Payment Bank Guarantee	shall mean unconditional and irrevocable first demand bank guarantee(s) provided by the Seller to the Buyer in terms of Clause 7, to secure the advance payment(s) made by the Buyer to the Seller.
Affiliate	shall mean, with respect to any Party, any Person which directly or indirectly, Controls, is Controlled by or is under common Control with it.
Applicable Laws	shall mean: <ol style="list-style-type: none"> (a) any law, legislation, statute, act, by-law, rule, regulation, memorandum, circular, resolution, ordinance, order, decree, protocol, notification, policy, administrative guideline, ruling, instruction, directive, code, consent, license, approval, permit, bilateral or international treaty or any interpretation thereof by any Government Authority or by any Person acting under the authority of any Government Authority, as may be applicable from time to time to the PO Documents, and to the exercise, performance and discharge of the respective rights and obligations of the Parties, or to the Parties, as the context may require; and (b) judgments, decrees, injunctions, writs, orders or like actions of any court, tribunal, government department or other administrative, judicial or quasi-judicial body or agency or instrumentality of competent jurisdiction, having the force of law in India, as may be applicable from time to time.
Applicable Permits	shall mean any waiver, exemption, building, variance, franchise, permit, authorization, approval, license or similar order which may be required to be obtained or maintained under Applicable Laws in relation to all or any part of the Scope of Work or any part incidental thereto, from any Government Authority, agency, authority, court or other body having jurisdiction over all or any part of the Goods to be supplied pursuant to the terms of the PO Documents.
Basic Price	shall mean the amounts payable by the Buyer to the Seller for performance of the Scope of Work determined in accordance with Clause 4, which shall be inclusive of applicable Taxes (except GST),

	packing, forwarding, freight and insurance charges, costs in respect of materials, consumables, tools and tackles, manufacturing, margin, overheads, charges for Bank Guarantees, charges for supervisory activities and all other costs associated with performance of the Scope of Work and other obligations under the PO Documents, unless otherwise specified in the Purchase Order.
Bank Guarantees	shall mean, collectively, the Advance Payment Bank Guarantee, Contract Performance Bank Guarantee, Performance Bank Guarantee and Contract Performance cum Performance Bank Guarantee, as may be applicable, provided by the Seller in accordance with Clause 7.
Buyer	shall mean the company issuing the Purchase Order, including its legal successors and assigns.
Buyer IP	shall have the meaning ascribed to the term in Clause 33.3.
Buyer's Representative	shall have the meaning ascribed to the term in Clause 13.1(a).
CGST Act	shall mean the Central Goods and Services Act, 2017.
CGST Rules	shall mean the Central Goods and Services Tax Rules, 2017.
Change	shall have the meaning ascribed to the term in Clause 9.1.
Change in Law	<p>shall mean the occurrence of any of the following after the Effective Date:</p> <ul style="list-style-type: none"> (a) enactment, modification or repeal of any Applicable Laws in India; (b) any change in the interpretation or enforcement of any Applicable Laws by a decision rendered by the Supreme Court of India; or (c) increase or decrease in the relevant rates of applicable GST in India, <p>provided that "Change in Law" shall not include any:</p> <ul style="list-style-type: none"> (i) change in the interpretation or application of any Applicable Laws except as provided in point (b) above; (ii) enactment, modification, repeal, interpretation or application of any Applicable Laws of India which increases market prices of Goods, commodities, raw materials, labour and services in general, including any variation in Taxes on input materials; (iii) such event of Change in Law listed in points (a), (b) and (c) above, which occurs during the time period of delay in the

		performance of the Seller's obligations, for reasons not attributable to the Buyer; and
		(iv) implication on the PO Price arising out of currency fluctuations.
Change Order		shall have the meaning ascribed to the term in Clause 9.4.
Change Proposal		shall have the meaning ascribed to the term in Clause 9.3.
Codes and Standards		shall mean the latest applicable international and Indian codes and standards that would be applicable for goods of a similar type and specification as the Goods.
Commissioning		shall mean the successful operation of the Goods at full load (or as may be applicable) in accordance with the terms of the PO Documents and the achievement of the parameters specified in the Specifications.
Commissioning Spares		shall mean all such spares which are essential for Commissioning that are to be provided by the Seller to the Buyer as part of the Goods to be supplied under the PO Documents.
Confidential Information		shall have the meaning ascribed to the term in Clause 45.1.
Contract Performance Guarantee	Bank	shall mean a single, unconditional, irrevocable first demand bank guarantee provided by the Seller to the Buyer in terms of Clause 7, to secure the performance by the Seller of the Scope of Work, for a time period as specified in the Purchase Order.
Contract Performance Guarantee	cum Bank	shall mean a single, unconditional, irrevocable first demand bank guarantee provided by the Seller to the Buyer in terms of Clause 7, to secure the performance by the Seller for the entire Scope of Work, including the Seller's obligations during the Defect Liability Period, as specified in the Purchase Order.
Control		shall mean, with reference to a Person, the possession, directly or indirectly, of the power or authority to direct or cause the direction of the day to day affairs, management or policies of such Person, whether through the ownership of voting securities, by any agreement with respect to voting of securities, by any other agreement conferring control over management or policy decisions, by virtue of the power to control the composition of the board of directors or managers of such Person, or otherwise.
Defect Period	Liability	shall mean the period more specifically set out in the Purchase Order, during which the Seller shall remain liable, at its own cost, and expense for all repairs or replacement of any Defects.
Defect(s)		shall mean any defect or damage to the Goods (including any portion supplied or executed by any Sub-Contractor) on account of: (i) non-conformance of the Goods with the Specifications; or (ii)

	any faulty design, engineering or workmanship, which affects the ability of the Goods to comply with the Specifications on a consistent and reliable basis.
Delay Liquidated Damages	shall have the meaning ascribed to the term in Clause 25.1.
Delivery	shall mean the loading, transport, delivery and such other ancillary or related services required to be performed by the Seller or the Seller's Representatives for the safe and undamaged delivery of the Goods (or any part thereof) including all Spare Parts and other tools and tackles (as may be applicable) to the Buyer at the Delivery Point, in accordance with the Delivery Term and other terms in the PO Documents.
Delivery Point	shall mean the location at which the Seller shall Deliver the Goods, as specified in the Purchase Order.
Delivery Schedule	shall mean the time specified in the Purchase Order (as extended in accordance with the terms herein), within which the Delivery as a whole (or of a part of the Goods where a separate time for completion of Delivery of such part has been prescribed) is to be completed in accordance with the terms of the PO Documents.
Delivery Term	shall mean the delivery term, including any applicable Incoterm, on the basis of which the Seller shall complete the Delivery.
Disclosing Party	shall have the meaning ascribed to the term in Clause 45.1.
Discrepant Amount	shall have the meaning ascribed to the term in Clause 5.3(b).
Discrepant Amount Notice	shall have the meaning ascribed to the term in Clause 5.3(a).
Dispatch Plan	shall have the meaning ascribed to the term in Clause 10.2.
Drawings	shall mean all drawings referred to in the PO Documents, along with any modification of such drawings (as approved in writing by the Buyer) and shall include: (i) drawings furnished by the Buyer or the Buyer's consultant to the Seller; and (ii) engineering data and drawings submitted by the Seller during the progress of the Scope of Work.
Effective Date	shall mean the date of issuance of the Purchase Order by the Buyer to the Seller, unless otherwise specified in the Purchase Order.
ESG	shall have the meaning ascribed to the term in Clause 29.1.
Factory Tests	shall have the meaning ascribed to the term in Clause 19.2(a).
Force Majeure	shall have the meaning ascribed to the term in Clause 37.1.

Good Practice	Industry	shall mean standards, methods, techniques and procedures that are employed by leading, reasonable and prudent suppliers in India engaged in supply of goods which are similar to the Goods.
Goods		shall mean the plant, equipment, machinery, apparatus and things of all kinds to be supplied (including Spare Parts and tools and tackles, as applicable) by the Seller as per the Scope of Work and Specifications set out under the PO Documents.
Government Authority		shall mean the Government of India, any state government, any local, regional, territorial or municipal government or quasi government, ministry, government department, commission, board, bureau, agency, instrumentality, executive, legislative, judicial, regulatory or administrative body or any other state utility having or purporting to have jurisdiction over the PO Documents, or any portion thereof and performance of the obligations and exercise of rights of the Parties in accordance with PO Documents, or any matter arising from or in connection with the PO Documents.
GST		shall mean the applicable goods and services tax and/or any compensation or cess payable in terms of the CGST Act, the State Goods and Services Tax Acts passed by the States in the Republic of India, the Integrated Goods and Services Tax Act, 2017, the Union Territory Goods and Services Tax Act, 2017, the Goods and Service Tax (Compensation to States) Act, 2017, and/or any other Applicable Laws issued as a part of the regime applicable to goods and services and the rules, notifications and circulars under each of the foregoing for the time being in effect, as applicable to the Scope of Work performed under the PO Documents.
GTC		shall mean these general terms and conditions.
Handing Certificate	Over	shall mean the certificate issued by the Buyer to the Seller in relation to successful handing over of the Goods in accordance with Clause 26.
Incoterms		shall mean the delivery terms as published and defined by the International Chamber of Commerce, in INCOTERMS, 2020 (ICC Publication 723).
Intellectual Property Rights		shall mean all intellectual property rights throughout the world together with any application or right to apply for registration of intellectual property rights, (whether registered or unregistered, existing now or in the future) including copyright, patents, designs, trade marks (including service marks), business names, domain names, know-how, confidential information, inventions, concepts, software licenses, object code, technology development work, software objects, moral rights, trade secrets, processes, methods and other analogous rights applicable to or utilised in the Goods.
Latent Defect(s)		shall mean inherent Defects in design, workmanship or material which have surfaced after the Defect Liability Period and which

		could not be determined during routine inspection and which may hinder or endanger the normal operation of the Goods.
Latent Defect Liability Period	Defect	shall mean the period of five (5) years commencing from the date of expiry of the Defect Liability Period, during which the Seller shall remain liable at its own cost and expense for all repairs or replacement of any Latent Defect.
Losses		shall mean all costs, damages, liabilities, verdicts, judgements, settlements, fines, penalties and expenses (including court costs and expenses and reasonable costs and expenses of legal counsel) with respect to actions, suits, demands, causes of action, claims or investigations incurred by an indemnified party in connection with an event to which it is entitled to indemnity under the PO Documents (including any court costs and expenses and reasonable costs and expenses of legal counsel incurred by such indemnified party for legal action to enforce such indemnity obligations).
Mandatory Spares		shall mean the spare parts which have to be mandatorily provided by the Seller, as may be listed in an annexure to the Purchase Order or as may be specified by the Buyer.
Master Document List		shall have the meaning ascribed to the term in Clause 11.2.
MDCC		shall mean the material dispatch clearance certificate, issued by the Buyer to the Seller, permitting dispatch of the Goods.
O&M Manuals		shall have the meaning ascribed to such term in Clause 12.3.
Other Contractor		shall mean the contractor(s), consultants and/or advisers other than the Seller to whom orders have been placed by the Buyer for the Project, including for the erection, testing and commissioning of the Project, and shall include their respective successors and permitted assigns.
Party		shall mean the Buyer or the Seller, as applicable.
Performance Bank Guarantee		shall mean a single, unconditional, irrevocable first demand bank guarantee provided by the Seller to the Buyer in terms of Clause 7, to secure performance of the Seller's obligations during the Defect Liability Period.
Performance Guarantee		shall mean the guaranteed standards and parameters of operation and/or performance of the Goods as set out in the Specifications.
Performance Guarantee Tests		shall mean the test(s) that may be conducted by the Buyer or any Other Contractor, with regard to the Goods to ascertain whether the installed Goods, or the specified parts thereof, are able to achieve the Performance Guarantee.

Person	shall mean individuals, firms, companies, corporations, trusts, government entities, joint ventures and other bodies, whether incorporated or not.
PO Documents	shall mean and include the Purchase Order and the GTC along with any annexures, schedules and documents that are referred in or attached to the Purchase Order.
PO Price	shall mean the Basic Price plus applicable GST.
Price Schedule	shall mean the schedule annexed to the Purchase Order, setting out the prices payable in respect of the Goods.
Project	shall mean such project or facility for which the Goods are being procured, as further described in the Purchase Order.
Project IP	shall have the meaning ascribed to the term in Clause 33.1.
Punch-List Items	shall have the meaning ascribed to the term in Clause 26(a).
Purchase Order	shall mean the purchase order issued by the Buyer.
Quality Assurance Plan	shall mean the detailed quality assurance plans set out in the annexure which may be identified as 'Quality Assurance Plan' or 'QAP' and attached to the Purchase Order or as may be prepared by the Seller in accordance with Clause 19.1, which shall set out the procedures and compliances required for the design and execution stage for the Goods, to ensure that the Goods comply with the requirements set forth in the Specifications and the PO Documents.
Receiving Party	shall have the meaning ascribed to the term in Clause 45.1.
Scope of Work	shall mean the Goods to be supplied by the Seller and such other activities required to be performed by the Seller under the PO Documents, as specifically set out in Clause 3.
Seller	shall mean the successful bidder who is awarded the PO Documents and which is a company duly incorporated and validity existing as per the provisions of Companies Act, 2013; or a proprietor in case the bidder is a sole proprietorship; or a partnership firm registered under Applicable Laws.
Seller IP	shall have the meaning ascribed to the term in Clause 33.2
Seller's Representative	shall have the meaning ascribed to the term in Clause 13.2(a).
Shortfall Liquidated Damages	shall have the meaning ascribed to the term in Clause 25.2.

Site	shall mean a location designated by the Buyer and specified in the Purchase Order.
Spare Parts	shall mean all such spares, components or parts pertaining to the Goods which are to be supplied by the Seller under the PO Documents, including the Commissioning Spares and Mandatory Spares.
Specifications	shall mean all Drawings, referred standards, various technical guidelines, quality standards, technical documents, specifications, provisions and requirements which pertain to the method and manner of performing the Scope of Work and to the quantities and qualities of the Goods and the materials to be furnished under the PO Documents, as set out in the annexure which may be identified as 'Price Schedule' or 'Specifications' and attached to the Purchase Order, as may be amended or modified from time to time.
Sub-Contractor	shall mean (i) any Person to whom any part of the Scope of Work has been subcontracted by the Seller, or (ii) any supplier from whom the Seller purchases any item(s) required for the performance of the Scope of Work, and shall include the successors and permitted assigns of such entities.
Taxes	shall mean and include taxes, duties, levies, cess, GST and other similar imposts by whatever name called, whether in the nature of indirect tax or direct tax and whether or not imposed at the federal, state, municipal or any other level.
TCS	shall have the meaning ascribed to the term in Clause 6.2.
TPIA	shall mean the third party inspection agency appointed and/or authorized by the Buyer for carrying out inspection of the Goods.

2. Interpretation of PO Documents

2.1 Subject to the order of precedence as set out below, all documents forming part of the PO Documents are intended to be correlative, complementary and mutually explanatory. The PO Documents shall be read and construed together as a single document and where these documents are at variance with each other, for the purpose of interpretation, the priority of the documents shall be in the following sequence:

- (a) The Purchase Order.
- (b) The Specifications, including all Schedules, Drawings and any other documents attached thereto.
- (c) The GTC.
- (d) Any other Schedules and Annexures forming part of the PO Documents.

2.2 In the event of any inconsistency:

- (a) between the text of the Clauses, the Annexures and the Specifications hereto, the text of the Clauses shall prevail;
 - (b) between the text of the Specifications and the Annexures hereto, the text of the Specifications shall prevail; and
 - (c) between the provisions and particulars of one Annexure and those of any other Annexure, the provisions and particulars of the Annexure more specific to the provision which is inconsistent shall prevail.
- 2.3 Notwithstanding the sub-division of the PO Documents into sections, every part of each document shall be deemed to be supplementary to and complementary of each other.
- 2.4 All headings and marginal notes to the items of the GTC, the Purchase Order, the Specifications or to any other document forming part of the PO Documents are solely for the purpose of giving a concise indication of the general subject matter thereof and not a summary of the contents. Such headings and marginal notes shall not be deemed to be part of or be used in the interpretation or construction of the said document.
- 2.5 Words incorporating the singular only shall also include the plural and vice-versa where the context requires. Words of any gender are deemed to include the other gender(s).
- 2.6 The term 'Clause', 'Schedule' or 'Annexure' refers to a specified clause, schedule or annexure of the GTC, unless otherwise expressly specified.
- 2.7 Reference to the words 'include', 'including' and 'included' shall be construed without limitation.
- 2.8 For the purposes of the PO Documents, the words and abbreviations that have well-known technical or trade meanings used but not defined in the PO Documents, shall be construed in accordance with such recognized technical or trade meanings.
- 2.9 Reference to any Applicable Laws or to any provision thereof shall include references to any such Applicable Laws as it may be amended, supplemented or re-enacted from time to time (whether before or after the date of the PO Documents) and any reference to a statutory provision shall include any subordinate legislation made from time to time under that provision.
- 2.10 The PO Documents are a joint draft product of the Parties, and any rule of statutory interpretation interpreting agreements against a party primarily responsible for drafting the agreement shall not be applicable to the PO Documents.
- 2.11 All approvals provided by a Party under the PO Documents shall be in writing and, for the purposes of the PO Documents, 'in writing' shall mean and include printing, electronic mail and letters.
- 2.12 Any reference to the PO Documents shall include all amendments, changes and modifications made to the PO Documents in accordance with the provisions hereof.

3. Scope of Work

- 3.1 The detailed Scope of Work shall be as specified in the Purchase Order and Specifications. The Seller shall be bound to ensure that materials, designs and workmanship that are used in the Goods are compliant with the Specifications and Codes and Standards, as set out in the PO Documents.

- 3.2 The Seller shall, unless specifically excluded in the PO Documents, perform all such incidental work and activities with respect to such items not specifically mentioned in the PO Documents but can be reasonably inferred as required or necessary to complete the Scope of Work, as if such work, activities and/or items were expressly mentioned in the PO Documents. Except as otherwise expressly provided in the PO Documents, the Seller agrees and acknowledges that the Seller shall perform all of its obligations and responsibilities under the PO Documents at its own risk, cost and expense.
- 3.3 The Goods shall be complete in every respect with all mountings, fittings, fixtures and standard accessories normally supplied with such Goods, even though not specifically detailed in the Specifications, unless specifically included in the list of excluded items. The Seller shall ensure that the Goods as Delivered shall be fit and suitable for the intended purposes as evidenced by or inferred from the PO Documents, and shall comply with the terms of the PO Documents. The Seller shall not be eligible for any extra payment in respect of such mountings, fittings, fixtures and standard accessories etc., which are needed for the safe operation of the Goods as required under applicable Codes and Standards and the PO Documents, though they may not have been included specifically in the PO Documents.
- 3.4 In addition to supply of all Spare Parts, tools and tackles included in the PO Documents, the Seller agrees to supply at the Delivery Point, all materials, equipment, consumables, accessories and construction supplies as may be required up to completion of the Scope of Work and for the satisfactory performance of the Goods (as applicable), at its own cost and expense.
- 3.5 The Seller agrees and acknowledges that it has entered into the PO Documents after due and careful inquiry of all matters relating hereto and has satisfied itself in respect of all pertinent matters which may have a bearing upon the performance of the Scope of Work, including the nature, quality and magnitude of the Scope of Work to be performed, availability of personnel and resources, Applicable Laws and conditions at the Site. The Seller's failure to acquaint itself and/or consider any applicable condition, situation, requirement or other matter referred to under this Clause or those pertaining to the Scope of Work or the PO Documents shall not relieve the Seller from performing its obligations under the PO Documents, nor entitle the Seller to any variation in accordance with Clause 9 herein.

4. Basic Price

The Basic Price shall be as specified in the Purchase Order. Unless otherwise provided for in the Purchase Order or agreed otherwise by the Buyer, the Basic Price shall remain firm and no escalation to the Basic Price shall be allowed during the term of the PO Documents, including any extensions thereto. The Seller shall be deemed to have satisfied itself as to the correctness and sufficiency of the Basic Price, which shall, except as otherwise provided for in the PO Documents, cover all its obligations under the PO Documents. Unless otherwise provided for in the Purchase Order, the Basic Price shall be inclusive of all applicable Taxes (except GST), costs in respect of materials, Spare Parts, consumables, tools and tackles, manufacturing, packing, forwarding and freight charges, insurance charges, margin, overheads, charges for Bank Guarantees, charges for supervisory activities and all other costs associated with performance of the Scope of Work and other obligations under the PO Documents.

5. Payment Terms

- 5.1 The PO Price shall be payable as per the terms specified in the Purchase Order. Unless otherwise specified in the Purchase Order, the Seller shall raise all invoices in an electronic format and comply with the Applicable Laws in this respect, including the relevant procedure pertaining to e-invoicing. Any invoice issued by the Seller, in any manner other than the manner prescribed under the PO Documents shall be deemed to be an incorrect invoice and shall not be eligible for any payments under the Purchase Order. The Seller shall ensure that all invoices raised under the PO Documents are correct and complete. The mode of payment through which the Buyer shall make payments under the PO Documents shall be as specified in the Purchase Order. Any bank charges incurred with respect to such payments shall be to the respective accounts of the Parties.
- 5.2 No payment made by the Buyer herein shall be deemed to constitute acceptance by the Buyer of the Goods or any part(s) thereof. All payments payable by the Buyer to the Seller under the PO Documents shall be made subject to any deductions or withholdings required under Applicable Laws and the Buyer shall provide the Seller with the relevant documents or certificates required under Applicable Laws in connection with such deductions or withholdings.
- 5.3 *Discrepant Amounts*
- (a) In the event the Buyer finds any discrepancy in any invoice raised by the Seller, the Buyer shall issue a written notice of such discrepancy to the Seller ("**Discrepant Amount Notice**") and the reasons thereof, within a reasonable time period from the date of time period of receipt of the invoice by the Buyer.
 - (b) The Buyer shall, in such an event, pay such part of the invoice value as is not discrepant, in accordance with the payment terms specified in the Purchase Order, and withhold that part of the invoice value which is discrepant ("**Discrepant Amount**") till such time that the discrepancy is resolved between the Parties.
 - (c) Notwithstanding anything to the contrary in the PO Documents, the payment of any invoice by the Buyer shall not prejudice, at any point of time, any rights of the Buyer under the PO Documents, including the right of the Buyer to notify any discrepancy in respect of any amounts therein, as may be identified by way of any audit or inspection, that may have been conducted subsequent to the payment of such invoice. In the event any such discrepancy is identified in relation to any invoice that has already been paid by the Buyer, the Buyer shall have the right to adjust any amount that may be due and payable by the Seller, in accordance with Clause 47.
 - (d) Upon receipt of a Discrepant Amount Notice in relation to any Discrepant Amount from the Buyer, if the Buyer's view on the Discrepant Amount is accepted by the Seller, the Seller shall provide a revised invoice to the Buyer after excluding the Discrepant Amounts. If the Seller intends to dispute the Buyer's view on the Discrepant Amount, the Seller shall provide documentary evidence to the Buyer within fifteen (15) days of receipt of the Discrepant Amount Notice in respect of such Discrepant Amount, to enable the Buyer to confirm the acceptance or rejection of the Discrepant Amount within fifteen (15) days. If the Seller's documentary evidence is accepted by the Buyer, the Buyer shall accept the invoice originally raised by the Seller and make the payment of the Discrepant Amount in

accordance with the payment terms specified in the Purchase Order, from the date of submission of the documentary evidence by the Seller.

- (e) In the event that the Parties are unable to resolve any issue in relation to such discrepancies in the invoices within thirty (30) days of issue of the Discrepant Amount Notice by the Buyer in relation to such Discrepant Amount, such dispute shall be resolved in accordance with the provisions of Clause 41.

6. Taxes

- 6.1 Except GST, all applicable Taxes shall be solely payable by the Seller, unless otherwise specified in the Purchase Order. The Buyer shall pay the applicable GST to the Seller at actuals, as per the rates specified in the Price Schedule. The Seller shall deposit the applicable GST with the relevant Government Authority and file returns and such other analogous statutory filings with respect to GST, in accordance with the manner and timelines stipulated under Applicable Laws. The Seller shall, within three (3) days from such deposit and/or filings (as the case may be), submit to the Buyer all relevant documentation evidencing such compliance and deposit of GST. If the Seller fails to comply with its obligations under this Clause 6, the Buyer shall be entitled to: (i) withhold payments due to the Seller under the PO Documents; and/or (ii) invoke the Bank Guarantee(s) (as applicable), to the extent of the amount of GST that has not been deposited by the Seller with the Government Authorities, along with any interest, fine and/or penalty, as may be levied under Applicable Laws. In the event the Seller is in breach of its obligations under this Clause 6.1, the Buyer shall also be entitled to blacklist the Seller and thereby restrict the Seller from participating in future projects of the Buyer.
- 6.2 In the event the Seller is required to collect from the Buyer, tax collected at source ("**TCS**") as per the applicable law, then the Seller shall forthwith inform the Buyer and shall ensure that all invoices raised under the PO Documents (including pro-forma invoices for release of advance payments), clearly specify the correct amount of applicable TCS on the total invoice amount (including GST). The Seller shall, if required by the Buyer, furnish all other details and documentary evidence pertaining to such applicable TCS. The Seller shall comply with the requirements of the applicable law with respect to TCS and shall be solely responsible for any incorrect declaration in this regard.
- 6.3 *Compliances for the Seller*
 - (a) The Seller shall specify the correct HSN/IEC codes, or such other relevant classification of the Goods, as may be applicable, in the Seller's invoices. The Seller shall be responsible for any consequences of incorrect codes or declarations with respect to the Goods as may be required in terms of Applicable Laws, including any Losses suffered by the Buyer, and shall defend, indemnify and hold harmless the Buyer in this regard.
 - (b) The Seller shall, in respect of the deposit of Taxes (as may be applicable), comply with all Applicable Laws and shall ensure that all requirements, as stipulated under Applicable Laws in relation to the deposit of Taxes, are complied with. The Seller shall ensure timely deposit of all Taxes, including applicable fees, assessments and other analogous charges, as may be required in connection therewith, with the Government Authorities. The Seller shall be solely liable for any consequences arising out of non-compliance with such Applicable Laws and any expenses

suffered by the Buyer on account of such non-compliance by the Seller, shall be to the Seller's account.

- (c) The Seller hereby agrees and acknowledges that in case any tax benefits/rebates, duty drawbacks, GST refunds or such other applicable tax concessions and/or exemptions are available with respect to the Goods, the Seller shall avail of such concessions and/or exemptions or benefits and pass on such exemptions or benefits to the Buyer, or shall assist the Buyer in availing such exemptions or benefits. In order to enable the Buyer to satisfy its obligations under this Clause, the Seller shall duly execute all such further instruments and documents and do or procure to be done all such acts or things, as may be required to ensure that the terms of the PO Documents are complied with. Further, the Seller shall be responsible for availing any set-off with respect to input tax credits against the Taxes that are applicable on the raw materials used in the manufacture of the Goods, at its own cost. The Seller further agrees that it shall be solely liable in case such set-off is not availed and shall have no recourse to the Buyer for the same.
- (d) The Seller further agrees to bear any import or custom duty payable on any raw materials and components imported for manufacture of the Goods, supplied under Applicable Laws. The Seller shall also be responsible for port and customs clearance, including stevedoring, handling, unloading, loading, storage and inland transportation of such part or component of the Goods, and all charges and Losses, if any, in connection therewith or any incremental or increased customs duties relating to any incorrect declaration or inadequate documentation.

6.4 If there is a delay in Delivery and a statutory increase occurs in the applicable GST or implication of any new Taxes during the period of such delay, for reasons not attributable to the Buyer, the same shall be to the account of the Seller.

7. Bank Guarantees

- 7.1 The Seller shall provide the Buyer with the Bank Guarantees as shall be stipulated in the Purchase Order, issued by an Acceptable Bank, at the times and in the amount, manner and form as more particularly specified in the Purchase Order. The Seller shall also procure a confirmation from the bank issuing such Bank Guarantees of the valid issue of such guarantees and provide such confirmation to the Buyer, within ten (10) days of the submission of such Bank Guarantees to the Buyer. The Seller shall ensure that the Bank Guarantees submitted by the Seller and the rights and interests therein are assignable by the Buyer in favour of its lenders or security trustees. In the event that the bank issuing such Bank Guarantees, no longer meets the requirement of an Acceptable Bank at any time during the subsistence of such Bank Guarantee, the Seller shall replace such Bank Guarantee with another Bank Guarantee from an Acceptable Bank within fifteen (15) days of the Buyer's demand.
- 7.2 The Buyer shall have an unqualified option under the Bank Guarantees to invoke such guarantee(s) and claim the amounts thereunder in the event of the Seller's failure to honour its obligations, responsibilities or commitments under the PO Documents for which such relevant security has been provided and/or in respect of any amounts due from the Seller to the Buyer.
- 7.3 In the event the Buyer draws on any of the Bank Guarantees in part or in full, the Seller shall immediately restore the value of such Bank Guarantee to such value which existed

prior to drawal of such Bank Guarantee. If the Seller fails to restore such Bank Guarantee, the Seller shall not be entitled for any further payments under the PO Documents.

7.4 In the event that:

- (a) the Delivery of the Goods is delayed beyond the Delivery Schedule on account of which the advance amount remains unadjusted, the validity of the Advance Payment Bank Guarantee shall be extended till the revised Delivery Schedule or until recovery or refund of the full amount of the advance payment;
- (b) the Delivery of the Goods has been delayed beyond the Delivery Schedule or the Commissioning has not occurred, as the case may be, thirty (30) days prior to the scheduled expiry of the Contract Performance Bank Guarantee, the validity of the Contract Performance Bank Guarantee shall be extended till the revised Delivery Schedule or the time for Commissioning, as the case may be; and
- (c) the Defect Liability Period is extended, the validity of the Performance Bank Guarantee or the Contract Performance cum Performance Bank Guarantee, as the case may be, shall be extended till the expiry of such extended Defect Liability Period.

7.5 The Parties agree that all costs relating to the Bank Guarantees provided by the Seller in accordance with the terms of this Clause, including any costs in respect of the opening, renewal, maintenance and invocation of such Bank Guarantees (as applicable), shall be borne by the Seller.

8. Term of the Purchase Order and Delivery Schedule

8.1 Unless otherwise terminated in accordance with the provisions of the PO Documents, the term of the PO Documents shall be deemed to have been completed on expiry of the Latent Defect Liability Period. Provided however that if Latent Defect Liability Period is not applicable for the Goods, then the term of the PO Documents shall be deemed to have been completed on expiry of the Defect Liability Period.

8.2 The Delivery Schedule shall be as specified in the Purchase Order. The Delivery Schedule shall be deemed to be of essence with respect to the PO Documents and any extension of time in this respect shall also be considered to be of essence of the PO Documents. If the Seller fails to Deliver the Goods or any part thereof within the specified period, the Buyer shall be entitled, at its option, to:

- (a) recover Delay Liquidated Damages from the Seller; and/or
- (b) terminate the PO Documents or part thereof and source goods or equipment similar to the Goods after giving due notice to the Seller from a third party, at the risk and cost of the Seller.

8.3 Any cost or expense resulting from delay in Delivery shall be solely to the Seller's account. The adjustments with respect to the amount recoverable, if any, in terms of Clause 8.2 above, shall be made from the Bank Guarantee(s) provided by the Seller in terms of Clause 7, as may be available, or in any other manner as may be deemed appropriate by the Buyer.

9. Variation

- 9.1 The Buyer shall have the right to propose, and subsequently require the Seller to make, any change, modification, addition or deletion to, in or from the Scope of Work ("**Change**"). The Seller may, during the performance of the PO Documents, propose to the Buyer any Change that the Seller considers necessary or desirable to improve the quality, efficiency or safety of the Goods. The Buyer may at its discretion approve or reject any Change proposed by the Seller.
- 9.2 Notwithstanding Clause 9.1, any necessary change made due to any default of the Seller in the performance of its obligations under the PO Documents, shall not be deemed as a Change and shall not result in any adjustment of the PO Price or the Delivery Schedule.
- 9.3 If the Buyer proposes a Change or acknowledges the Seller's proposal for a Change in accordance with Clause 9.1, it shall send to the Seller a request to that effect, requiring the Seller to prepare and furnish to the Buyer as soon as practicable a proposal detailing the proposed Change ("**Change Proposal**"), which shall include, *inter alia*, a brief description of the Change, estimated impact on the Delivery Schedule, PO Price, Specifications or any other provisions of the PO Documents.
- 9.4 Upon receipt of the Change Proposal, the Buyer and the Seller shall mutually agree upon all matters therein contained. Within fifteen (15) days after such agreement, the Buyer shall, if it intends to proceed with the Change, issue the Seller with a written change order, incorporating the proposed Change ("**Change Order**"). If the Buyer is unable to reach a decision within fifteen (15) days of such agreement with respect to the Change Proposal or decides not to proceed with the Change for any reason, it shall notify the Seller accordingly.
- 9.5 The Seller shall communicate its acceptance of the Change Order to the Buyer within seven (7) days from the date of receipt of the Change Order, failing which the Change Order shall be deemed to have been accepted by the Seller. Provided that, in the event the Seller communicates its rejection of the Change Order within seven (7) days from the date of receipt of the Change Order, or the Parties are unable to reach an agreement with respect to any Change Proposal, the matter may be referred for dispute resolution, in accordance with Clause 41.
- 9.6 Notwithstanding anything contained in this Clause, the Buyer shall have the right to amend the Scope of Work and the revised PO Price shall be mutually agreed between the Parties. The Buyer shall have the right to get any part of the Scope of Work to be performed by other suppliers, contractors or service providers, which may be appointed from time to time by the Buyer and thereby removing such parts from the Scope of Work.

10. Supply Program

10.1 Programme of Performance

Unless otherwise specified in the Purchase Order, the Seller shall, within fifteen (15) days from the Effective Date, submit to the Buyer a detailed programme of performance of the Scope of Work by the Seller, presenting the sequence in which the Seller proposes to schedule, program and achieve completion of all obligations of the Seller under the PO Documents. The programme so submitted by the Seller shall be in accordance with the Delivery Schedule and other dates and periods specified in the Purchase Order, including such schedules of the Other Contractors, as may be provided by the Buyer to the Seller. The Seller shall update and revise the programme as and when appropriate or when required by the Buyer and shall submit all such revisions to the Buyer.

10.2 *Dispatch Plan*

The Seller shall, within such time period as may be agreed upon by the Parties in the kick-off meeting and in consultation with the Buyer, submit a dispatch plan detailing the schedule for Delivery of Goods at the Delivery Point ("**Dispatch Plan**"). The Buyer shall provide to the Seller the schedule in accordance with which the Other Contractors would require to utilise, install, erect and/or commission the Goods, as the case may be. The Seller shall ensure that the Dispatch Plan is implemented and performed in a manner such that the Goods are Delivered in accordance with the overall schedule provided by the Buyer in respect of the Project. The Dispatch Plan shall be updated on a periodic basis with the Buyer's approval, to match the actual progress of the work being undertaken by Other Contractors for the Project. If required by the Buyer, the Seller shall ensure that the Goods shall not be Delivered more than such number of months ahead of the scheduled pre-assembly/installation date, as specified in the Purchase Order. Notwithstanding Clause 19.3, the Buyer reserves the right to withhold the MDCC or payment against any such Goods which are Delivered in non-compliance with the aforementioned requirement of the Buyer.

10.3 *Progress Report*

The Seller shall monitor progress of all the activities specified in the programme referred to in this Clause and submit a progress report to the Buyer on a daily, weekly and/or monthly basis, as may be required by the Buyer.

10.4 *Progress of Performance*

If at any time the Seller's actual progress falls or threatens to fall behind the program referred to in Clause 10.1, the Seller shall prepare and submit to the Buyer a revised program, taking into account the prevailing circumstances, and shall notify the Buyer of the steps being taken to expedite progress so as to attain Delivery within the Delivery Schedule as specified under Clause 8, subject to the provisions of Clause 9 or any extended period as may otherwise be agreed upon between the Parties. The Parties agree that the Buyer shall have the right to depute its personnel at the Seller's or any of the Sub-Contractor's works, in order to expedite the performance of the Scope of Work.

11. **Design and Engineering**

- 11.1 The Seller shall, as part of the Scope of Work, perform all design and engineering works, in accordance with the PO Documents and Good Industry Practice and shall cause the Goods to meet and achieve the requirements of the PO Documents, Drawings, Specifications and the Performance Guarantees. In the event no applicable standard is mentioned in the Specifications, the standard shall be equivalent or superior to the industry standards whose application is appropriate to the origin of the Goods.
- 11.2 The Seller shall, within fifteen (15) days of the Effective Date or within such time period as may be agreed upon by the Parties in the kick-off meeting, prepare and provide to the Buyer for the Buyer's approval, a submission schedule, in accordance with which the Seller shall prepare and submit all design and engineering related documents and Drawings pertaining to the Goods ("**Master Document List**"). The Buyer shall, within fifteen (15) days of the receipt of the Master Document List from the Seller, communicate its approval or suggest revisions. The Seller shall incorporate such revisions and resubmit the Master Document List for the Buyer's approval.

- 11.3 If applicable, the Seller shall be responsible for carrying out technical studies as may be required in connection with the supply of Goods, and the Buyer shall provide information and assistance to the Seller as may be reasonably required in this regard. The Seller shall provide copies of reports for such technical studies to the Buyer, along with the records and data used for such studies.
- 11.4 The Seller shall be deemed to have scrutinized the Specifications which specifies the operation and functional requirements of the Buyer with respect to the Goods (including design criteria and calculations, if any). The Seller shall be responsible for the design of the Goods and for the accuracy of such Specifications of the Buyer (including design criteria and calculations).
- 11.5 The Seller undertakes that the design, engineering, the Seller's documents, the performance of the Scope of Work and the completed Goods shall be fit for the intended purpose, and shall be in accordance with Applicable Laws, Good Industry Practice and the terms of the PO Documents.

12. Drawings and Manuals

- 12.1 The Seller shall submit copies of the Drawings to the Buyer for approval within such time period as shall be specified in the Master Document List. The Buyer shall, within fourteen (14) days of receipt of such Drawings, either return one copy thereof to the Seller along with its approval or notify the Seller in writing of its disapproval and provide comments. If the Buyer disapproves the Drawings, the Seller shall modify the Drawings as per the Buyer's comments and resubmit them for approval.
- 12.2 The Seller shall not deviate from any Drawings submitted in accordance with Clause 12.1, without the Buyer's approval in writing. In the event of any inconsistency, inaccuracy or ambiguity in the Drawings, or if, in the opinion of the Seller, any detail thereof requires modification, the Seller shall immediately obtain the Buyer's approval and further instructions in writing before proceeding with the modification in the Drawings, which the Seller shall perform in compliance with such instructions issued by the Buyer. Notwithstanding any consent or approval of the Buyer, the Seller shall be responsible for, and shall promptly correct, any discrepancies, errors or omissions in the Drawings, documents and other particulars supplied by the Seller, and shall not be further relieved of its obligations under the PO Documents. If the Seller neglects or refuses to make the required corrections, the Buyer may, without prejudice to any of its other rights under the PO Documents, and after giving notice to the Seller, proceed to make the correction by itself or through a third party, and shall be entitled to recover the cost thereof from the Seller.
- 12.3 The Seller shall also, within such time period as shall be specified in the Master Document List, supply to the Buyer, for its review, the drafts of the manuals for the Buyer to be able to use, operate and maintain the Goods in accordance with the Specifications, Good Industry Practice and the PO Documents (the "**O&M Manuals**"). The Parties shall consult and discuss the Buyer's comments and clarifications on the O&M Manuals and the Seller shall revise the O&M Manuals to incorporate such changes and clarifications. The Seller shall ensure that the O&M Manuals include sufficient detail to enable the Buyer and/or the Other Contractors to fully operate the Goods and inspect, maintain, adjust, dismantle and re-assemble all parts of the Goods in accordance with Good Industry Practice, while ensuring minimum interference to its commercial operations.

- 12.4 The Seller shall ensure that all Drawings and O&M Manuals furnished pursuant to this Clause 12 are in an editable format (including software input and output, auto-cad and calculation files).

13. Parties' Representatives

13.1 *Buyer's Representative*

- (a) The Buyer shall have the right to appoint a representative for performing the duties delegated to it by the Buyer under the PO Documents, as shall be specified in the Purchase Order ("**Buyer's Representative**"). The Seller acknowledges that the Buyer has appointed or shall have the right to appoint the Buyer's Representative for the purpose of the PO Documents. The Buyer's Representative shall represent and act for the Buyer at all times during the term of the PO Documents. All notices, instructions, orders, certificates, approvals and all other communications under the PO Documents shall be given by the Buyer's Representative, except as herein otherwise provided. Such Buyer's Representative shall be authorised to bind the Seller for all purposes under the PO Documents and notices, approvals and consents given to or received from the Buyer's Representative shall have the same effect as if given to or received from the Buyer.
- (b) All notices, instructions, information and other communications given by the Seller to the Buyer under the PO Documents shall be given to the Buyer's Representative, except stated otherwise.

13.2 *Seller's Representative*

- (a) The Seller shall, for the purpose of the PO Documents, designate a competent and experienced person to serve as the representative for the Seller, within fifteen (15) days from the Effective Date, appoint a representative for performing the duties delegated to it by the Seller under the PO Documents ("**Seller's Representative**") and shall request the Buyer in writing to approve the person so appointed. If the Buyer makes no objection to the appointment within fifteen (15) days thereafter, the Seller's Representative shall be deemed to have been approved. If the Buyer objects to the appointment within fifteen (15) days of receiving the request for approval, the Seller shall appoint a replacement within fifteen (15) days of such objection, and the foregoing provisions of this Clause 13.2(a) shall apply thereto.
- (b) The Seller's Representative shall represent and act for the Seller at all times during the term of the PO Documents and shall give the Buyer's Representative all the Seller's notices, instructions, information and all other communications to be provided under the PO Documents.
- (c) All notices, instructions, information and all other communications given by the Buyer or the Buyer's Representative to the Seller under the PO Documents shall be given to the Seller's Representative.
- (d) The Seller shall not revoke the appointment of the Seller's Representative without the Buyer's prior written consent. If the Buyer consents thereto, the Seller shall appoint some other person as the Seller's Representative, pursuant to the procedure set out in Clause 13.2(a).

- (e) The Seller's Representative may, subject to the approval of the Buyer, at any time delegate to any person any of the powers, functions and authorities vested in the Seller's Representative. Any such delegation may be revoked at any time. Any such delegation or revocation shall be subject to a prior notice signed by the Seller's Representative, and shall specify the powers, functions and authorities thereby delegated or revoked. No such delegation or revocation shall take effect unless and until a copy thereof has been delivered to the Buyer and the Buyer's Representative and approval of the same has been obtained.

14. Personnel

- 14.1 The Seller shall be solely responsible for all personnel engaged for the performance of the Scope of Work, without any recourse to the Buyer. The personnel shall possess suitable competence, ability, skill, expertise, training and qualifications as is required for the performance of the Seller's obligations under the PO Documents. The Parties agree that the Buyer shall have no responsibility whatsoever for the Seller's or Sub-Contractors' personnel, vehicles and equipment, which are engaged for the performance of the Scope of Work under the PO Documents. The Buyer reserves the right to require the Seller to cause removal or replacement of any personnel indulging in misconduct or acting in a manner which is non-compliant with the PO Documents or the Buyer deems insubordinate, careless or disruptive to the performance of the Scope of Work.
- 14.2 The Seller shall, and require its Sub-Contractors and personnel engaged in performance of the Scope of Work to, comply with the PO Documents and Applicable Laws, including laws relating to employment, provident fund, minimum wages, prohibition of child labour, health, safety, welfare and immigration. The Seller shall undertake background verification and screening in respect of all personnel engaged for performance of the Scope of Work, including for criminal records and shall be responsible for the visas, work permits and other immigration requirements for its personnel. The Seller shall be liable and responsible for all payments to its personnel, including salaries, wages, Taxes, allowances and other benefits in accordance with Applicable Laws.

15. Subcontracting

15.1 *Approval for Subcontracting*

- (a) The Seller shall not subcontract the whole or part of the Scope of Work without the prior written approval of the Buyer, other than to those Sub-Contractors which may be preapproved by the Buyer and are set out in the Purchase Order. The Parties agree that the list of preapproved Sub-Contractors set forth in the Purchase Order may be updated by the Buyer from time to time during the term of the PO Documents. Notwithstanding the above, the Buyer reserves the right to refuse the engagement of a Sub-Contractor by the Seller or request a change of an existing Sub-Contractor, irrespective of such Sub-Contractor being preapproved by the Buyer, including in cases where such Sub-Contractor has:
 - (i) been blacklisted by any Government Authority; or
 - (ii) becomes bankrupt or insolvent, has a receiving order issued against it, compounds with its creditors, or, if the Sub-Contractor is a corporation, a resolution is passed or order is made for its winding up (other than a voluntary liquidation for the purposes of amalgamation or reconstruction), a receiver is appointed over any part of its undertaking or assets, or if the

Sub-Contractor takes or suffers any other analogous action in consequence of debt.

- (b) Prior to appointment of any Sub-Contractor not included in the list of preapproved Sub-Contractors, the Seller shall provide a written notice to the Buyer, providing details for each Person who the Seller intends to select to perform any aspect of the Scope of Work as a Sub-Contractor, and shall furnish to the Buyer for approval, such information concerning such proposed Sub-Contractor, as may be necessary to enable the Buyer to determine compliance with the Specifications, Codes and Standards and other conditions of the PO Documents, including:
 - (i) a brief description of the work to be performed by such proposed Sub-Contractor;
 - (ii) prior experience of the proposed Sub-Contractor in performing work similar to the Scope of Work; and
 - (iii) such other information as may be requested by the Buyer.
- (c) Nothing in the PO Documents generally or in this Clause 15 specifically shall be construed to relieve the Seller of any of its obligations under the PO Documents, for which it shall continue to remain completely and fully liable as if no Sub-Contractor had been appointed, or to affect the Buyer's rights *vis-à-vis* the Seller.

15.2 *Responsibility for Sub-Contractors*

- (a) The Seller shall ensure that all Sub-Contractors shall have and maintain all Applicable Permits to perform their respective work. The Seller shall further ensure that all work performed by such Sub-Contractors are in compliance with the Specifications and all other requirements set forth in the PO Documents.
- (b) The Seller shall be solely responsible for the acts, omissions or defaults of any Sub-Contractor, its agents or employees, as if they were the acts or defaults of the Seller, its agents or employees.
- (c) No subcontract or purchase order issued by the Seller in relation to the Scope of Work shall bind or purport to bind or create any obligations, directly or indirectly for the Buyer. The Seller shall ensure that all contracts entered into with the Sub-Contractors do not: (i) create any contractual obligation of the Buyer towards such Sub-Contractors; (ii) provide a right to any Sub-Contractor to raise a claim against the Buyer; (iii) give rise to a waiver by the Buyer of its rights to reject any Defects or deficiencies in the Goods or the Scope of Work; and (iv) release the Seller from being solely responsible to the Buyer for the Scope of Work. The Seller shall also provide to the Buyer un-priced copies of all subcontracts entered into with such Sub-Contractors, which shall be complete in all respects and shall contain all details and commercial conditions, including the scope of work, purchase and technical specifications, quality plans and delivery conditions. The Seller agrees and acknowledges that the Buyer shall have the right to require the Seller to furnish any particular details in this regard, in the event the copies of such subcontracts do not contain the information that may be required by the Buyer.
- (d) Additionally, every subcontract or purchase order or other contract entered into by the Seller with third parties in relation to the Scope of Work shall contain a provision permitting unilateral assignment thereof (including assignment of

warranties) to the Buyer upon the Buyer's written request. The Seller shall include in all such subcontracts and purchase orders the right of unilateral written termination by the Seller of all or a portion of such subcontract or purchase order, and if requested by the Buyer, the Seller shall exercise such right of termination.

16. Training of Buyer's Personnel

- 16.1 The Seller shall prepare a detailed program for the training of the Buyer's personnel and shall submit the same for the Buyer's approval, within the time period as may be agreed upon by the Parties in the kick-off meeting. The Seller shall, in accordance with the training program approved by the Buyer, provide, or cause to be provided, to the Buyer and its personnel, training in relation to the installation, testing, operation and maintenance of the Goods at the Site and all such premises of the Buyer where the Goods have been installed, at no cost to the Buyer.
- 16.2 The Seller further undertakes to provide to the Buyer and its personnel with, in addition to the O&M Manuals, all necessary installation procedures, training materials and aids, as may be required, including all training materials developed for the training program in order to facilitate the Buyer in conducting future training for its personnel. The Parties agree that the cost of boarding, lodging and travel for the Seller's personnel shall be to the account of the Seller.
- 16.3 In the event the Buyer requires any further training for its personnel in relation to the Goods, the Buyer shall depute such number of personnel at the Seller's or its original equipment manufacturer's works for such training, as may be specified in the Purchase Order, at no additional cost to the Buyer and on other terms as may be mutually agreed upon by the Parties. The Parties agree that the cost incurred in respect of travel, boarding, lodging and transportation of the Buyer's personnel to the place where the Seller's or its original equipment manufacturer's works are situated, shall be to the account of the Buyer. For the avoidance of doubt, the Seller acknowledges that the consideration for the training specified in this Clause 16 is included in the PO Price.

17. Permits and Licenses

- 17.1 The Seller shall obtain and maintain all Applicable Permits in respect of the Goods and as may be required to perform the Scope of Work. If requested by the Seller, the Buyer shall provide the Seller reasonable assistance in obtaining and maintaining any Applicable Permits. However, the foregoing shall in no circumstances be construed as relieving the Seller from its obligation to obtain and maintain Applicable Permits, for which it shall remain primarily and fully responsible, or as imposing any responsibility on the Buyer in respect of procurement of Applicable Permits.
- 17.2 The Seller shall maintain all records and registers as per the provisions of Applicable Laws and shall be solely liable for any consequences arising out of non-compliance with Applicable Laws by itself or by its Sub-Contractors, agents or personnel. Any incidental expenses for complying with Applicable Laws shall be borne by the Seller. The Seller shall not be entitled to any adjustment to the Delivery Schedule or the PO Price or any other terms of the PO Documents on account of any delay or failure to obtain or maintain any Applicable Permits.

18. Cooperation and Coordination with Buyer and Other Contractors

- 18.1 The Seller recognises and acknowledges that the Other Contractors have been or may be engaged by the Buyer to advise the Buyer and to perform other work and services in respect of the Project. The Seller shall cooperate and coordinate with the Buyer, the Other Contractors and their respective personnel, subcontractors, consultants and advisers, and shall provide all information and assistance and undertake all actions as may be required from the Seller. If required by the Buyer, the Seller shall enter into such arrangements with the Other Contractors, as may be required by the Buyer, to coordinate the performance of other work and services in respect of the Project.
- 18.2 If any part of the Seller's work is dependent upon the work of any Other Contractor, it shall be the Seller's responsibility to inspect and promptly report to the Buyer of any defect in such works which may affect the performance of the Goods and/or the Scope of Work. Any failure of the Seller to notify the Buyer shall constitute an acceptance by the Seller of the Other Contractors' work, and the Seller shall not be entitled to any adjustment to the Delivery Schedule or the PO Price or any other terms of the PO Documents on account of such failure. Notwithstanding the above, the Seller shall not be responsible for any inherent defects in the works performed by Other Contractors.
- 18.3 The Seller shall consult with the Buyer's Representative with respect to issues pertaining to the Goods and the Other Contractors' work, and shall participate in periodic meetings with the Buyer and the Other Contractors at the Site or such other location as may be specified, in respect thereof.
- 18.4 The Seller hereby acknowledges that failure to comply with its obligations under this Clause 18 may result in claims by the Other Contractor(s) against the Buyer. The Seller hereby undertakes to defend, indemnify and hold harmless the Buyer in respect of and against any such claim if the Buyer makes a determination, from the information provided to it by the Other Contractor(s), that such claim arose due to reasons attributable to the Seller and that the amounts claimed by the Other Contractor(s) are payable.
- 18.5 Save as provided in this Clause 18, the Seller hereby releases and forever discharges the Buyer from all actions, suits, claims, demands, costs and other liabilities of any nature which the Seller now has or at any time may have, or, but for the execution of the PO Documents, might have had against the Buyer arising out of or in connection with the performance, or any negligent performance, by any of the Persons referred to in this Clause 18, of any of their individual or collective obligations under any agreement in relation to the Project.

19. Quality Assurance, Inspection and Testing

19.1 *Quality Assurance*

- (a) In addition to the Quality Assurance Plan as may be annexed to the Purchase Order, if the Buyer requires the Seller to provide any additional Quality Assurance Plan with respect to the Goods (or any particular part thereof), the Seller shall prepare and submit such plans to the Buyer for approval within ten (10) days of the Buyer's requirement or within such time period as may be agreed upon by the Parties in the kick-off meeting. The Buyer shall provide its observations and comments on the plans submitted by the Seller and shall indicate, as a part of its observations and comments, *inter alia*, all such stages of manufacturing where the Buyer would require testing and inspection in respect of each of the Goods. Thereafter, the Seller shall incorporate the Buyer's comments and prepare the final Quality

Assurance Plan, as required to be complied with by the Seller in accordance with Clause 19.1(b) below.

- (b) The Seller shall, and shall cause its Sub-Contractors to, strictly adhere to the Quality Assurance Plans while performing the Scope of Work. Any non-compliance with the Quality Assurance Plan by the Seller shall entitle the Buyer to reject the Goods in accordance with Clause 22. The Seller agrees and acknowledges that compliance with the Quality Assurance Plan shall not relieve the Seller of its duties, obligations or responsibilities under the PO Documents.

19.2 *Factory Tests*

- (a) The Seller shall perform all such tests and inspections for the Goods at the place of manufacture thereof, in accordance with the Quality Assurance Plan, in order to determine whether the Goods conform to the Quality Assurance Plan, Specifications, Codes and Standards and other requirements of the PO Documents ("**Factory Tests**").
- (b) The Seller shall give fifteen (15) days' advance notice of the conduct of the Factory Tests and of the place and time thereof to the Buyer and, unless otherwise agreed by the Buyer, all such Factory Tests shall be conducted in the presence of the Buyer and/or the TPIA, as the case may be.
- (c) If the Goods or any part of the Goods fails to pass the Factory Tests, the Buyer and/or the TPIA shall have the right to reject such Goods or parts thereof in and the Seller shall either rectify or replace such Goods or part thereof. After completion of all necessary repairs or replacements, the Seller shall repeat the Factory Tests upon giving a notice to the Buyer, in accordance with this Clause 19.2. The cost of such re-testing, including charges to be paid to the TPIA in respect of the same, shall be borne by the Seller and any delays in Delivery of Goods due to the same shall be to the Seller's account.
- (d) The Seller shall furnish at each location, where the Factory Tests are carried out, all requisite facilities, assistance, labour, equipment, materials, utilities, apparatus and instruments necessary for the safe and convenient conduct of the Factory Tests. The Seller shall also furnish to the Buyer and/or the TPIA, access to records of all performance inspections undertaken by the Seller and its Sub-Contractors pursuant to the Factory Tests. The Seller shall also ensure that the instruments and equipment utilised for the conduct of Factory Tests are calibrated by either the manufacturer of such instruments or equipment, or any accredited testing laboratory, from time to time. The Seller shall provide to the Buyer the latest calibration certificate for such instruments or equipment.
- (e) The Parties agree that neither the performance of the Factory Tests, nor the Buyer's attendance or failure to exercise the right of inspection and testing under this Clause 19.2, shall relieve the Seller of any of its obligations hereunder or prejudice any of the Buyer's rights under the PO Documents.

19.3 *Acceptance of Goods for Dispatch*

- (a) When the Factory Tests in respect of the Goods performed in accordance with Clause 19.2 have been successfully carried out and the test reports thereof have been approved by the Buyer, the Buyer shall issue the MDCC to the Seller. The Seller

shall dispatch the Goods only after issuance of the MDCC by the Buyer. Any permission for dispatch of the Goods approved by the Buyer or the TPIA (as the case may be), including the issuance of MDCC, shall not relieve the Seller from its obligations and responsibilities under the PO Documents.

- (b) The Seller shall submit 'Manufacturer's Test Certificates' and the MDCC along with the dispatch of respective Goods. The Seller shall also provide a scanned copy of the same to the Buyer by e-mail, for reference.

19.4 *Additional Tests*

The Buyer may, in addition to the tests prescribed under the PO Documents, require the Seller to carry out any additional tests in connection with the Scope of Work ("**Additional Tests**"). In the event the results of such Additional Tests show that workmanship and materials are:

- (a) not in accordance with the terms of the PO Documents, the Seller shall be responsible for rectification of the Defect and/or replacement of the Defective part of the Goods as discovered through the Additional Tests, and any implication on the Delivery Schedule shall be borne by the Seller; or
- (b) in accordance with the terms of the PO Documents, the Seller shall be entitled to propose a Change for adjustment to the Delivery Schedule in accordance with Clause 9, to the extent that such Additional Tests had a material effect on the Seller's ability to meet the Delivery Schedule.

20. **Packing, Forwarding, Transportation and Delivery**

20.1 The Seller shall, after proper painting of the Goods (as per the Specifications, if applicable), pack and crate such Goods in a manner suitable for air, water, rail or road transportation (as applicable) to a tropical, hot climatic region in accordance with internationally accepted logistics practices and in a manner that protects the Goods from damage and deterioration during such transportation and during storage at the Site till the time of erection. The Seller shall also ensure that the packing of the Goods is sufficient to withstand, without limitation, rough handling during transit and exposure to extreme temperatures, salt and precipitation during transit and open storage.

20.2 All packing cases shall be non-returnable, unless specified otherwise in the Purchase Order. Additional markings such as 'Handle with Care', 'This Side Up' (to be indicated by arrow), 'Fragile' or any other additional indications for protection and safe handling of the Goods shall be appropriately made, depending on the type of Goods. If the Goods are packed in multiple cases, the Seller shall indicate progressive serial numbers for each such case and shall further ensure that all cases are individually tagged with the Seller's part numbers and respective code numbers for the Goods. The Seller shall ensure that the packing case size and weights shall take into consideration, where appropriate, the remoteness of the Delivery Point and/or the Site, as the case may be, and the absence of heavy handling facilities at all points during transit of the Goods. All Goods shall also have a metal nameplate, unless otherwise stated in the Specifications, fixed in a suitable position with full particulars engraved thereon and, in order to facilitate identification, each part of the Goods shall be suitably marked.

20.3 The Seller shall prepare a detailed packing list of all packages, containers, bundles and materials forming each and every consignment dispatched to the Delivery Point. The

Seller shall be responsible for making all necessary arrangements for handling and transportation of the Goods up to the Delivery Point. The Seller shall also advise the Buyer in writing of any special dispatch, handling or storage measures or procedures required for ensuring safekeeping of the Goods within thirty (30) days prior to dispatch. In the event the Delivery of the Goods at the Delivery Point is not feasible due to any reason whatsoever, and the Goods are required to be stored at a temporary location till the Goods can be Delivered at the Delivery Point, then the Seller shall arrange for the handling and storage of the Goods at such temporary location, at its own risk and cost.

- 20.4 Unless otherwise specified in the Purchase Order the: (i) charges with respect to packing, forwarding and transportation of Goods are included in the Basic Price; and (ii) Goods shall be dispatched to the Delivery Point through a carrier or transporter acceptable to the Buyer as per the agreed Delivery Term. The Seller shall be liable for all Losses in respect of the Goods due to breakage, damage or pilferage with respect to the Goods in transit or due to improper painting, packing or crating, and the same shall be borne by the Seller.
- 20.5 Unless otherwise specified in the Purchase Order, in the event any consignment of the Goods is an over dimensional consignment, the Seller shall carry out the survey and inspection of the route proposed to be used for transportation of such over dimensional consignment from the dispatch site or the port(s) nearest to such works (as applicable) till the Delivery Point. The Seller shall submit a transportation/logistics plan for the Buyer's review and approval. Further, the Seller shall adhere to all Applicable Laws and obtain all Applicable Permits with respect to the transportation of such over dimensional consignment(s), and shall submit copies of such Applicable Permits to the Buyer.
- 20.6 Upon dispatch of each consignment of the Goods, the Seller shall notify the Buyer of the date of each consignment from the port of embarkation or dispatch site and the expected date of arrival of such consignment at the Delivery Point. The Seller shall be responsible for obtaining all necessary Applicable Permits for transportation of the Goods to the Delivery Point, if applicable. The Parties agree that the Seller shall, if responsible for the transportation of the Goods, defend, indemnify and hold harmless the Buyer from and against any claim for damage to roads, bridges, any other traffic facilities or to any public property that may be caused by such transportation of the Goods up to the Delivery Point.
- 20.7 Unloading of Goods at the Site shall be arranged by the Buyer, unless otherwise mentioned in the Purchase Order. The Seller shall not arrange part-shipments and/or transshipment without the Buyer's approval in writing. The Seller shall be liable for all Losses that the Buyer may incur due to the Seller's violation of such instructions.
- 20.8 The Seller shall be responsible for complying with the CGST Act and the CGST Rules and for generation of the applicable e-way bill in accordance with the provisions thereof, as well as any extension, amendment and cancellation thereof. The Buyer shall cooperate with the Seller with respect to provision of necessary information or documents, as requested by the Seller in this regard. The Seller shall ensure that the Buyer generates the e-way bill or furnishes the necessary information required for generating the e-way bill at any time prior to dispatch of the Goods, and shall further ensure that a copy of such bill is handed over to the Person responsible for dispatch and transportation of the Goods along with all relevant dispatch documents for submission at the Delivery Point along with the Goods. Any fine or penalty incurred by the Buyer due to non-compliance of the CGST Act or the CGST Rules shall be borne by the Seller. In the event the Buyer is

required to pay such fine or penalty, the same shall be recovered from the Seller at actuals.

- 20.9 The Seller shall take all precautions for Delivery of Goods that comprise of hazardous materials and chemicals, including: (a) complying with all Applicable Laws with respect to Delivery of such hazardous materials; (b) specifying the nature of hazard and recommended nature of handling such hazard on the 'Packing and Materials Safety Data Sheet', which shall be sent along with each consignment of Goods; and (c) ensuring that the transporter: (i) is aware of the hazardous properties of the chemicals; (ii) has undergone proper training to handle such materials; and (iii) possesses the relevant 'Transport Emergency Card'.
- 20.10 The Seller shall, if applicable to the Goods, weigh the Goods at the time of dispatch and indicate such weight of the Goods in the invoice issued by the Seller to the Buyer. Upon Delivery, the Buyer shall have the right to require weighment of such Goods on a per vehicle basis, at a weighbridge designated by the Buyer. If the weight of the Goods, as measured by the Buyer for each vehicle, is less than the weight notified by the Seller to the Buyer for such vehicle by a margin that is in excess of the tolerance limit of zero point five percent (0.5%) of the weight notified by the Seller for such Goods, the Seller shall issue a credit note in favour of the Buyer for an amount equivalent to the PO Price attributable to the difference in the weight of the Goods in excess of the permitted tolerance levels. For the avoidance of doubt, the Seller shall not be liable to provide credit notes if the margin in the weight between the weight of the Goods as notified by the Seller and the weight noted at the Buyer's weighbridge is within the allowed tolerance limit specified above.
- 20.11 Pursuant to Delivery of the Goods, the Buyer shall have the right to verify the contents of the respective consignment Delivered to assess if there is any apparent shortage, damage, Defects or any other discrepancy between the Goods Delivered and the dispatch documents, the final packing list submitted by the Seller to the Buyer, the MDCC, the Specifications and/or any other requirements specified by the Buyer. If the Buyer determines from any inspection that there exists any discrepancy, it shall have the right to reject the Goods in accordance with Clause 22.

21. Insurance

- 21.1 Unless otherwise specified in the Purchase Order, the Seller shall, at its own cost, arrange, secure and maintain a comprehensive transit insurance policy for transportation of the Goods, including Spare Parts, tools and tackles, for all risks including loading, handling, transportation up to and unloading at the Delivery Point for a value equivalent to one hundred and ten percent (110%) of the PO Price. The Seller shall be responsible for any Losses in respect of the Goods, including Spare Parts, tools and tackles during loading, handling, transportation and unloading at the Delivery Point. In case of any Losses, irrespective of whether the insurance claim is settled or not, the Seller shall promptly replace the lost or damaged Goods free of cost, and Deliver the same to the Delivery Point as per the Delivery Term.
- 21.2 The Seller shall ensure that its Sub-Contractors also maintain insurance similar to the insurance required to be maintained by the Seller in accordance with the requirements set out in the Purchase Order with limits of liability and levels of deductibles as mandated by Applicable Laws and, if not mandated by Applicable Laws, then as acceptable to the Buyer. The Parties shall further obtain and maintain adequate insurance for their respective employees and representatives during the term of the PO Documents.

- 21.3 The Seller shall obtain additional insurance or revise the limits of existing insurance as per the Buyer's request (if any) from time to time in which case, any additional cost shall be to the Buyer's sole account.
- 21.4 In the event of occurrence of an insured event, the Seller shall do all that is necessary to be done to prefer a claim under the insurance policy procured by it and shall carry out repairs or replacement of the damage caused by the insured event.
- 21.5 If the Seller fails to effect and keep in force or materially modifies the insurances referred to in this Clause or the Purchase Order, as the case may be, the Buyer may, in its sole and absolute discretion, effect and keep in force any such insurances, and pay such premium or premiums as may be necessary for that purpose, and from time to time deduct the amount so paid from or to any monies due, or which may become due, to the Seller, or recover the same as a debt due from the Seller. Further, the insurance obtained by the Seller shall contain a clause to the effect that the insurers have agreed to waive all rights of subrogation against the persons assured (including all beneficiaries thereof).
- 21.6 In the event that the Seller purports to comply with the insurance requirements under the PO Documents by reference to any of its umbrella or corporate insurance policies, it shall provide to the Buyer any information that the Buyer may reasonably require in respect of such policy(ies).
- 21.7 The Seller shall:
- (a) provide to the Buyer satisfactory evidence of the insurances required to be effected under the PO Documents before commencing the transportation of the Goods;
 - (b) be responsible for the deductibles, exceptions and exclusions relating to insurance proceeds under the insurance policies procured pursuant to this Clause 21; and
 - (c) where required by the Buyer, designate the Buyer's lenders as the 'loss payees', in all the insurance policies procured by the Seller under the PO Documents.
- 21.8 The claim management with respect to the aforesaid insurance policies shall be the sole obligation of the Seller. The Seller shall provide not less than thirty (30) days advance notice to the Buyer prior to the cancellation, termination or material alteration of said policies of insurance.
- 21.9 The Seller agrees and acknowledges that except as specified in this Clause 21 above, all costs in respect of the insurances specified under the PO Documents shall be to the Seller's account, and shall be included in the Basic Price.

22. Acceptance and Rejection

- 22.1 During the term of the PO Documents, the Buyer shall be entitled to reject the Goods, which in its opinion, do not comply with the Specifications, Good Industry Practice, are Defective and/or fail to satisfy the Performance Guarantee(s). The Buyer's decision about such rejections shall be final and binding and the Seller shall not have the right to object to such rejection in any manner whatsoever. The Buyer shall have the right to return to the Seller any rejected Goods, at the Seller's cost and risk, and no payment shall be made by the Buyer for such rejected Goods. All packing, freight, Taxes, holding costs or any other cost of such rejected Goods shall be borne solely by the Seller. The Buyer reserves

the right to reject the Goods if further Defects are noticed during assembly, processing or installation, even if the Goods have been accepted and paid for by the Buyer in the first instance.

- 22.2 All rejected Goods, if Delivered, shall be retrieved by the Seller within twenty (20) days of intimation of such rejection by the Buyer. If the Seller does not retrieve the Goods within forty five (45) days from the date of intimation of rejection by the Buyer to the Seller, the Buyer shall be entitled to dispose the rejected Goods.
- 22.3 Rejected and other Defective Goods shall be satisfactorily replaced with proper Goods. The Seller shall deliver replacements to the rejected Goods at the Site, or such other location as the Buyer may specify, within a time period mutually agreed between the Parties. Such replacement Goods shall be as per the terms of the PO Documents (including Specifications) and approved by the Buyer in writing.

23. Title and Risk of Loss

- 23.1 Except as otherwise provided herein, all Goods furnished by the Seller hereunder shall become the property of the Buyer, on the earlier of the following:
- (a) Goods or any part thereof are Delivered to the Buyer; or
 - (b) PO Price payable for the Goods is paid by the Buyer to the Seller.
- 23.2 Notwithstanding the foregoing, the Seller shall be responsible for and shall bear any and all risk of loss or damage to the Goods until Delivery thereof in accordance with the provisions of the PO Documents. Upon Delivery, risk of loss or damage shall pass to the Buyer and the Buyer shall take over the care, custody and control of the Goods, provided that any loss or damage to the Goods caused due to reasons attributable to the Seller shall be borne by the Seller.
- 23.3 For the avoidance of doubt, in the case of partial or staggered Delivery, title and risk in the Goods shall pass from the Seller to the Buyer in accordance with Clause 23.1 and 23.2 above in respect of such Goods which have been Delivered or paid for.

24. Supervision by the Seller

- 24.1 The Seller shall, in addition to Delivery of the Goods, perform any or all of the activities set out in this Clause 23, as may be specified in the Purchase Order. Unless otherwise specified in the Purchase Order, the Basic Price shall be inclusive of charges for supervisory activities to be performed by the Seller.

24.2 *Mechanical Completion*

The Seller hereby acknowledges that the erection, installation and mechanical completion of the Goods shall be carried out by the Other Contractors engaged by the Buyer for the Project. The Seller shall, if required by the Buyer, provide to the Buyer the procedures for erection and mechanical completion of the Goods. The Seller shall further supervise, co-ordinate and co-operate with the Other Contractors for ensuring that the erection and mechanical completion of the Goods is correct, complete and in conformance with the technical requirements of the Project.

24.3 *Trial Operation*

Upon completion of all activities as specified in Clause 24.2 above, the Buyer shall, if applicable, cause the Goods to be operated on a trial basis by the Other Contractors, subject to the Specifications and other technical requirements of the Project. The Seller shall, if required by the Buyer, supervise and assist the Other Contractors with such trial operation of the Goods.

24.4 *Commissioning*

The Seller shall, if required by the Buyer, provide necessary details in respect of the procedure for Commissioning of the Goods and supervise and facilitate the Other Contractors in conduct of such Commissioning. If the Commissioning of the Goods is successful and the Buyer issues a provisional acceptance certificate to the Other Contractors responsible for erection, testing and commissioning, a copy of such provisional acceptance certificate shall be provided by the Buyer to the Seller. If the Commissioning of the Goods is not successful, the Seller shall, at the Buyer's option, either:

- (a) undertake such measures as specified in Clause 24.6; or
- (b) pay Shortfall Liquidated Damages to the Buyer in accordance with Clause 25.2, provided however that, in cases where separate Performance Guarantee Tests are being performed in terms of Clause 24.5, the Shortfall Liquidated Damages shall be payable in accordance with the provisions of Clause 25.2.

24.5 *Performance Guarantee Tests*

- (a) The Seller guarantees that the Goods and all parts thereof shall achieve the Performance Guarantee. The Seller acknowledges that the Performance Guarantee Tests (and repeats thereof) shall be conducted by the Other Contractors to ascertain, *inter alia*, whether the installed and Commissioned Goods or the relevant part thereof attain the Performance Guarantees. The Seller shall, if required by the Buyer, attend and facilitate such Performance Guarantee Tests.
- (b) If, the Performance Guarantee is not achieved (either in whole or in part), the Seller shall, at the Buyer's option, either:
 - (i) undertake such measures as specified in Clause 24.6; or
 - (ii) pay Shortfall Liquidated Damages to the Buyer in respect of the failure to meet the minimum Performance Guarantee in accordance with Clause 25.2.
- (c) If, for any reason not attributable to the Buyer or the Other Contractors, even the minimum level of Performance Guarantee is not achieved, the Buyer has the right to reject such Goods without any liability whatsoever, in accordance with Clause 22. Notwithstanding anything contained to the contrary in the PO Documents, the Buyer may, at its sole discretion, choose to accept such Goods after the Parties have renegotiated the Basic Price for such Goods and payment of Shortfall Liquidated Damages by the Seller for such Goods.

24.6 *Remedial Measures*

The Seller agrees that, subject to Clause 24.4, 24.5(b) and 24.5(c), in the event that the activities specified in Clauses 24.2, 24.3, 24.4 and/or 24.5 are not successfully completed for any Goods and/or the Performance Guarantees are not attained, for reasons

attributable to the Seller, the Buyer reserves the right to either reject the Goods and require replacements thereof in accordance with Clause 22, or require the Seller to perform, at the Seller's cost:

- (a) all specific corrective measures or rectification in respect of the Goods, which when implemented, shall enable the Goods to comply with the requirements of the PO Documents;
- (b) correct the Drawings, the O&M Manuals and other technical documentation to reflect such corrective measures; and
- (c) co-operate with and supervise the Other Contractors in performing any of the activities set out in Clauses 24.2, 24.3, 24.4 and/or 24.5 above, after all corrective measures to eliminate the Defects or deficiencies have been undertaken.

24.7 The Seller shall ensure that it performs its obligations under this Clause 23 in accordance with the schedule and the timelines for the Project, as specified by the Buyer to the Seller. The Seller shall, and shall ensure that its Sub-Contractors, labourers and personnel shall, comply with the requirements specified by the Buyer for the purposes of this Clause 23, including all site regulations as specified under Clause 28.1.

25. Liquidated Damages

25.1 If the Seller fails to complete Delivery as per the Delivery Schedule, the Buyer shall have the right to levy liquidated damages for such delay, in accordance with the terms specified in the PO Documents ("**Delay Liquidated Damages**").

25.2 If the Goods fail to achieve successful Commissioning or pass Performance Guarantee Tests (as may be applicable), the Buyer shall have the right to levy liquidated damages for such shortfall in performance, in accordance with the terms specified in the PO Documents ("**Shortfall Liquidated Damages**"). Unless otherwise specified in the Purchase Order, it is hereby clarified that in the event Performance Guarantee Tests are applicable for the Goods, the Shortfall Liquidated Damages shall be levied upon the Goods failing to successfully achieve such Performance Guarantee Tests, and not upon any instance of unsuccessful Commissioning of the Goods.

25.3 The combined maximum ceiling for the Delay Liquidated Damages and the Shortfall Liquidated Damages shall be as specified in the Purchase Order.

25.4 The Parties agree that the liquidated damages set out in the PO Documents are a genuine pre-estimate of the Losses that shall be suffered by the Buyer on account of any delay in completion of the Scope of Work and/or failure to achieve Commissioning and/or breach of the Performance Guarantee. The Parties further irrevocably agree that the liquidated damages prescribed herein: (i) shall be payable on demand without requiring any proof of actual Loss caused by the Seller's breaches; and (ii) have been mutually determined after joint discussions and calculations.

25.5 The Parties agree that the GST applicable on liquidated damages payable by the Seller under this Clause 25 shall be to the Seller's account. The total amount of liquidated damages payable by the Seller in terms of the PO Documents shall be grossed up to take into account such liability of GST and the Buyer shall be entitled to raise invoice(s) upon the Seller in respect of the same. The Buyer may recover such liquidated damages (as grossed up) by: (i) deducting such liquidated damages from any amounts due or which

may become due to the Seller; (ii) directing the Seller to pay such liquidated damages to the Buyer as a debt due and payable; or (iii) claiming such liquidated damages from the available Bank Guarantees.

- 25.6 The payment of liquidated damages shall not relieve the Seller from its obligation to complete Delivery, nor from any other obligations and liabilities under the PO Documents, and shall not prejudice any other remedy that the Buyer may have in relation to the Seller's non-compliance with the PO Documents. Any correspondence or minutes of meetings and/or acceptance of delayed performance of the Scope of Work shall not be construed as a waiver of liquidated damages payable under the PO Documents.

26. Handing Over

The Buyer shall issue the Handing Over Certificate to the Seller upon successful Commissioning of the Goods or the successful conduct of the Performance Guarantee Tests for such Goods (as the case may be), subject to the Seller fulfilling the following obligations:

- (a) the Seller shall have completed its obligations in relation to Delivery and supervision of installation, testing and Commissioning of the Goods, as the case may be, including such items which, in the Buyer's determination, individually or in any combination do not have an adverse effect on the safety, functioning, operability or integrity of the use of the whole or part of the Goods for its intended use ("**Punch-List Items**");
- (b) subject to Clause 24.5(c), successful rectification of any shortfall in the Performance Guarantee Tests; and
- (c) payment of the entire amount of liquidated damages required to be paid under Clause 25 by the Seller, if any.

27. Defect Liability

- 27.1 If the Goods are in breach of the warranties set out in Clause 31.1 and/or any Defects are found in the Goods during the Defect Liability Period, the Seller shall, at its cost and expense and in consultation and agreement with the Buyer regarding appropriate remedying of the Defects, promptly repair, replace or otherwise make good such Defects, deficiencies or damages as may be notified by the Buyer on or before the expiry date of the Defect Liability Period for the Goods or any part thereof, including any other damage to the Goods caused by such Defects. For the avoidance of the doubt, it is clarified that the determination of a Defect shall be at the sole discretion of the Buyer and the decision of the Buyer in this regard should be final and binding on the Seller. The Buyer's acceptance of the Goods, Spare Parts, tools and tackles shall in no way relieve the Seller of its obligations under this Clause.
- 27.2 The Buyer shall provide the Seller with necessary access to the Goods at the Site or such other premises where the Goods are installed as required for performance of the Seller's obligations under this Clause. The Seller may, with the consent of the Buyer, remove from the Site or such other premises, the Goods or any part thereof that is Defective and/or damaged, if such repairs cannot be expeditiously carried out thereon.
- 27.3 If the Seller fails to promptly commence remediation of such Defect(s), the Buyer may, following notice to the Seller, proceed to remedy the Defect(s), and any costs incurred

by the Buyer in connection therewith shall be: (i) reimbursed by the Seller; (ii) deducted by the Buyer from any amounts due to the Seller; or (iii) claimed by the Buyer under the applicable Bank Guarantees.

- 27.4 If the repair, replacement or making good of any Goods that are Defective is of such a character that it may affect the efficiency of the Goods or any part thereof, the Buyer may require the Seller to immediately perform tests on the repaired or replaced part of such Goods, upon completion of such remedial work. If such repaired or replaced part fails the tests, the Seller shall carry out further repair, replacement or making good (as the case may be) until that part of the Goods passes such tests. The tests shall be mutually agreed upon by the Parties.
- 27.5 If the Goods or any part thereof cannot be used by reason of such Defect and/or making good of such Defect, the Defect Liability Period of the Goods or such part, as applicable, shall be extended by a period equal to the period during which the Goods or such part could be used by the Buyer because of any of the aforesaid reasons. In the event any Sub-Contractor provides a longer guarantee with respect to the Goods or any part thereof, the Seller shall extend the benefit of such longer guarantee to the Buyer. The Seller shall, in this regard, obtain the best possible warranties and guarantees from the Sub-Contractors with respect to the materials and workmanship for the Goods, for the benefit of the Buyer. All such warranties and guarantees shall be so written as to survive all of the Parties' inspections, tests and approvals.
- 27.6 At the end of the Defect Liability Period, the Seller's liability for Defects with respect to the Goods ceases, except in case of Latent Defects. The Seller shall make good such Latent Defects until the expiry of the Latent Defect Liability Period, in accordance with this Clause 27.

28. Compliance with Applicable Laws and Site Regulations

- 28.1 The Seller shall, and ensure that its Sub-Contractors and their respective personnel shall, abide by all Applicable Laws relating to the manufacture, procurement and Delivery of Goods and performance of all obligations under the PO Documents. If the Seller is required to access the Site for the performance of its obligations under the PO Documents, the Seller shall comply with the specific rules and regulations (including safety regulations) as provided by the Buyer and to be observed during performance of the PO Documents at the Site. The Seller shall ensure that its Sub-Contractors, labourers and personnel also comply with the said rules and regulations. Such rules and regulations shall include rules in respect of security, safety of the Goods and people at the Site, gate control, sanitation, medical care and fire prevention. The Seller shall also strictly comply with standard safety norms, rules and regulations prevalent in the industry and the 'code of conduct' published on the Buyer's website while performing its obligations under the PO Documents.
- 28.2 The Seller shall be liable for any damage or injury to Persons or property of the Buyer or third parties caused as a result of acts or omissions of the Seller in the course of performing the Scope of Work and all other obligations under the PO Documents.

29. Compliance with Environmental, Social and Governance Requirements

- 29.1 The Seller shall, as a part of performing its obligations under the PO Documents, ensure responsible business management pertaining to environmental, social and governance ("ESG") related matters. In this regard, the Seller shall, and ensure that its Sub-

Contractors and their respective personnel shall: (i) comply with policies, codes and guidelines, as may be notified by the Buyer to the Seller, pertaining to the ESG requirements and as may be required in terms of Applicable Laws; (ii) employ management systems for ESG risks and opportunities, and commit to continuous improvements thereof; (iii) ensure fair terms and conditions of employment for its Sub-Contractors, employees and personnel; (iv) take all necessary care of the personnel engaged in the Delivery of the Goods and undertake activities for their skill enhancement and welfare; (v) assess and mitigate the health, safety and environmental risks which may arise due to the performance of the Scope of Work; and (vi) focus on corporate responsibility and long term sustainability.

- 29.2 The Seller shall, and ensure that its Sub-Contractors and their respective personnel shall, abide by all environmental laws. The Seller shall take all necessary care that the Scope of Work is performed with the minimum possible impact on the environment and local community, and shall further take all precautions to avoid pollution or contamination of air, land or water arising out of the performance of the Scope of Work. The Seller shall ensure efficient management and disposal of hazardous materials and toxic emissions, in compliance with the Applicable Laws. The Seller shall preserve and protect all existing vegetation such as trees. Further, the Seller shall not remove or destroy such vegetation, unless such vegetation creates any hindrance with respect to the Delivery of the Goods.
- 29.3 Further, the Seller shall, and ensure that its Sub-Contractors shall, as part of its corporate responsibility, undertake to focus on: (i) the promotion of diversity, prosperity and sustainable development; (ii) enhancement of skills, empowerment of women, protection of human rights and development of local community; (iii) reduction of pollution, preservation of biodiversity and water resources, conservation of natural resources and energy and supporting efforts to combat climate change; (iv) develop and use environmental friendly technology and reduce negative impact on the environment; (v) creation and implementation of sustainable water use strategies; (vi) avoiding the usage of plastic (including any single use plastic items or non-biodegradable materials) and innovating new products to reduce carbon footprint; and (vii) establishing strong risk management and corporate governance mechanisms and build healthy stakeholder relationships.
- 29.4 In furtherance to the objectives and requirements stipulated in this Clause 29, the Seller represents, warrants and covenants that:
- (a) equal employment opportunities and a work environment conducive to the growth and development are provided to the Seller's personnel;
 - (b) all personnel are employed on their own free will;
 - (c) the Seller's workforce does not comprise of any form of prohibited labour, including forced or bonded labour and child labour;
 - (d) the Seller's personnel are not subjected to any form of discrimination or harassment;
 - (e) there is no incidence of slavery and human trafficking of any form in any transactions entered into by the Seller;
 - (f) the Seller's personnel do not and shall not indulge in any activity which is prohibited under the Applicable Laws;
 - (g) regular meetings are conducted with the Seller's personnel by the supervisor of such personnel such that the personnel are provided with a fair and transparent forum to freely raise their problems and grievances;

- (h) a formal grievance redressal mechanism is established by the Seller such that its personnel have free and fair access to the Seller's Representative, for the personnel to raise their grievances, without any kind of prejudice or retaliation on account of raising such grievances; and
- (i) the Buyer's whistle blower policy is complied with and if any of the Seller's personnel becomes aware of any wrongdoing or unethical activity being performed by the Buyer's personnel or Other Contractors, then such activity is promptly reported to the Buyer in accordance with such policy.

30. Spare Parts

- 30.1 The Seller shall provide Mandatory Spares pertaining to the Goods in accordance with the Dispatch Plan and the terms of the PO Documents.
- 30.2 The Seller shall also be responsible for providing all Commissioning Spares, which shall be deemed to be included in the scope of the Seller, at no additional cost to the Buyer. The Seller shall ensure that the Commissioning Spares are provided to the Buyer within the Delivery Schedule, and in any case no later than at least fifteen (15) days prior to the scheduled date of Commissioning.
- 30.3 All Spare Parts procured under the PO Documents and which are required to be interchangeable with certain other parts or components of the Goods, shall strictly conform to the Specifications and be identical to its corresponding main part or component and be fully interchangeable (in respect of dimensions and/or functionality, as applicable). The Seller shall, on Delivery, submit to the Buyer a certificate guaranteeing the fitment-cum-interchangeability of such Spare Parts.
- 30.4 The Seller shall provide the Buyer with typical identification drawings, catalogues, assembly drawings and any other document reasonably required by the Buyer so as to enable the Buyer to identify the Spare Parts.
- 30.5 In addition to the Spare Parts identified under the PO Documents, if the Buyer further identifies certain particular items of spares, the Seller shall submit the prices and delivery quotation for such spares within thirty (30) days of receipt of such request with a validity period of six (6) months for consideration by the Buyer and placement of order for additional spares, if the Buyer so requires. The Seller shall further guarantee the long term availability of all Spare Parts, promptly and at a fair market price, for the full life of the Goods provided under the PO Documents.
- 30.6 In the event the Seller goes out of production or discontinues manufacturing of the Spare Parts, the Seller shall:
 - (a) provide an advance notice of at least twelve (12) months to the Buyer in order to assist the Buyer in procuring such Spare Parts, if required;
 - (b) provide to the Buyer the full manufacturing drawings, material specifications and technical information, as may be required by the Buyer, for the purpose of manufacture of such Spare Parts for its own use or to procure such Spare Parts from alternate sources;
 - (c) grant or procure for the Buyer a non-exclusive, irrevocable and royalty-free license to use the Intellectual Property Rights of the Seller or Sub-Contractor in any documentation and other materials provided in connection with the PO

Documents, including the right to produce such Spare Parts which are not in production for the life of the Goods at no additional cost; and

- (d) provide the Buyer with a detailed list of all commercially available parts and components purchased by the Seller, including details such as the part number, name and location of the suppliers and price lists, for the purchase thereof of such discontinued Spare Parts,

and the Seller shall further ensure that a similar provision is included in its contracts with its Sub-Contractors.

30.7 The Seller warrants that the minimum residual shelf-life of all Goods and Spare Parts supplied under the PO Documents shall, at the time of Delivery, be at least seventy five percent (75 %) of the standard shelf-life of such Goods.

30.8 In case the Seller fails to supply the Spare Parts, including the Mandatory Spares and the Commissioning Spares, the Buyer shall be entitled to procure the same in accordance with Clause 32.

31. Representations, Warranties and Covenants

31.1 *Representations and Warranties with respect to the Goods*

- (a) The Seller represents and warrants that the Scope of Work performed by the Seller and Sub-Contractors shall be executed in accordance with the provisions of Clause 11 and in conformity with the other terms of the PO Documents and free from defects and deficiencies, and further warrants that:
 - (i) the design and engineering of the Goods shall satisfy the minimum requirements set forth in the Specifications and shall be free of Defects and deficiencies. Such engineering and design shall be such that the Goods shall function properly in accordance with the Specifications and terms of the PO Documents and shall meet the Performance Guarantees and all other safety, operability and performance criteria as specified in the PO Documents;
 - (ii) the fabrication and manufacturing of the Goods shall be in accordance with the designs, Drawings and Specifications prepared in accordance herewith and approved by the Buyer and all workmanship of the Seller and Sub-Contractors shall be in full conformity with the requirements of the PO Documents and free of Defects and Latent Defects;
 - (iii) all Goods shall be new and in full conformity with the technical documents and other requirements of the PO Documents, shall be of suitable quality for the purposes and uses intended and shall be free of Defects and Latent Defects; and
 - (iv) the Goods shall be fit for the purposes and uses intended and capable of operation in the manner contemplated hereby and as provided in the Specifications.
- (b) In the event of any breach of the representations and warranties set forth above for reasons attributable to the Seller, the Buyer shall have the right to reject such Goods in accordance with Clause 22 and require replacements thereof, or require

the Seller to rectify and correct all such errors, omissions, Defects or deficiencies in the Goods, such that the Goods comply with the requirements of the PO Documents. The Seller shall, if required by the Buyer, undertake a root cause analysis for the purpose of determining the appropriate remedial action for such errors, Defects or deficiencies identified in the Goods, and shall provide a report for the same to the Buyer.

- (c) The Seller's obligations, responsibilities, liabilities and warranties with respect to designing, engineering, procuring and manufacturing the Goods correctly and in accordance with the PO Documents and its warranties set forth above, shall not be reduced or affected by any supervision, superintendence, approval, inspection, test, direction, acceptance or payment, including, approvals in relation to any Drawings and documents by the Buyer and/or Buyer's Representative (or failure to supervise, superintend, approve, inspect, test, or give a direction, as the case may be).

31.2 The Seller further represents, warrants and covenants to the Buyer that:

- (a) it is duly organized, validly existing, and in good standing under the laws of the country or state in which it is organized or incorporated;
- (b) it is duly qualified to do business in all jurisdictions and owns or possesses all Applicable Permits that are necessary to operate its business as is currently being conducted and perform its obligations under the PO Documents, and that the copies of such Applicable Permits have been delivered to the Buyer;
- (c) it has full corporate power and authority to execute, deliver and perform its obligations under the PO Documents, and that the execution, delivery and performance of the PO Documents by the Seller have been duly authorised by all necessary corporate action on part of the Seller;
- (d) the execution, delivery and performance of the PO Documents by the Seller and the consummation of the transactions contemplated thereby do not and shall not contravene the certificate of incorporation or by-laws of the Seller and do not and shall not conflict with or result in: (i) a breach of or default under any indenture, agreement, judgment, decree, order or ruling of any court or Government Authority to which the Seller is a party or by which any of its assets are bound that would have a material adverse effect on the Seller's ability to perform its obligations under the PO Documents; or (ii) a breach of any Applicable Laws;
- (e) the PO Documents constitute legal, valid and binding obligations of the Seller, which are enforceable against it in accordance with the terms of the PO Documents;
- (f) the Scope of Work shall be performed with professionalism, promptness, diligence and due care, in a skilled, workmanlike and timely manner, in accordance with Good Industry Practice and the terms of the PO Documents;
- (g) there are no legal, arbitration or any other proceedings by or before any Government Authority, now pending or threatened against it, its Affiliate or any Sub-Contractor which, if adversely determined, could be expected to have adverse effects on the financial conditions, options, prospects or business of the Seller or the Seller's ability to perform its obligations under the PO Documents;

- (h) it has the requisite expertise, skill, knowledge, experience, manpower and adequate infrastructure (with capacity and ability to augment all of these as may be necessary) to successfully perform the Scope of Work in accordance with the terms of the PO Documents;
- (i) it has examined all aspects of the PO Documents (including other terms and conditions of the PO Documents) and the Scope of Work and has satisfied itself fully as to the sufficiency of consideration for performance and completion of all of its obligations under the PO Documents;
- (j) it has the financial standing and capacity to undertake the manufacture, design, supply and Delivery of the Goods and remedy any Defects therein in accordance with the PO Documents;
- (k) it is fully aware of and shall comply with all Applicable Laws during the performance of the Scope of Work;
- (l) the Goods shall be free and clear of any and all claims and encumbrances;
- (m) the Sub-Contractor of the Seller does not have any right of seller's lien against the Goods supplied by the Seller;
- (n) in entering into the PO Documents, it is acting in its own capacity and not in the capacity as trustee of any trust or as agent on behalf of any entity;
- (o) neither the Seller nor any of its Affiliates or Sub-Contractors, and to the best of its knowledge, none of its or its Affiliates' or Sub-Contractors' respective employees, officers, directors, representatives, or agents, has made, offered to make or agreed to make any loan, gift, donation, commission, kick-back, bribe or other payment or facility, directly or indirectly, whether in cash or in kind, to or for: (i) any government official, employee, representative or agent; (ii) any employee, officer, director, representative or agent of the Buyer or its Affiliates; or (iii) any other Person, with respect to the negotiation, execution or performance of the PO Documents; and
- (p) no representation or warranty made by it, as contained herein or in any other document furnished by it to the Buyer or to any Government Authority in relation to Applicable Permits or the PO Documents, contains or shall contain any untrue statement of material fact or omits or shall omit to state a material fact necessary to make such representation or warranty not misleading.

31.3 The representations and warranties provided by the Seller pursuant to Clause 31.1 and 31.2 shall be deemed to apply to all of the work performed by any Sub-Contractor employed or engaged by the Seller as though the Seller had itself performed such work.

31.4 The Buyer represents and warrants to the Seller that:

- (a) it is a corporation duly organized, validly existing, and in good standing under the laws of India;
- (b) it has full corporate power and authority to execute, deliver and to perform its obligations under the PO Documents, and that the execution, delivery and performance of the PO Documents by the Buyer have been duly authorized by all necessary corporate action on part of the Buyer; and

- (c) the execution, delivery and performance of the PO Documents by it and the consummation of the transactions contemplated thereby do not and shall not: (i) contravene the Buyer's certificate of incorporation, its constituent documents or by-laws; (ii) conflict with or result in a breach of or default under any license, indenture or agreement to which the Buyer is a party that would materially and adversely affect the Buyer's ability to perform its obligations under the PO Documents; or (iii) breach any Applicable Laws by which the Buyer or any of its assets are bound.

32. Seller's Liability for Failure to Perform

In the event the Seller is in breach of its obligations under the PO Documents, which results in delay in the Delivery Schedule or hindrance in performance of the Scope of Work, the Buyer shall, without prejudice to any of its other rights under Applicable Laws or the PO Documents, be entitled to procure goods similar to the Goods from any other seller, and the Seller shall, in addition to the payment of liquidated damages, be liable to reimburse to the Buyer any additional costs, including any overheads, incurred for the procurement of such goods.

33. Intellectual Property Rights

33.1 *Project IP*

All Intellectual Property Rights subsisting in the Goods, Specifications, and all other work and things prepared or developed by or on behalf of the Seller under or in connection with the PO Documents (the "**Project IP**") vests in the Buyer upon creation or, to the extent that any Intellectual Property Rights are not created at the time of the creation of Project IP, upon the later creation of those rights.

33.2 *Seller's IP*

All Intellectual Property Rights created or developed by or on behalf of the Seller:

- (a) prior to the Effective Date;
- (b) other than in connection with the PO Documents; and
- (c) which the Seller makes available, contributes, brings to or uses in connection with the PO Documents,

collectively, the "**Seller IP**", are and shall remain the property of the Seller.

33.3 *Buyer's IP*

All Intellectual Property Rights created or developed by or on behalf of the Buyer and which the Buyer makes available, contributes, brings to or uses in connection with the PO Documents (including all Intellectual Property Rights in the preliminary design and the Specifications) (the "**Buyer IP**") are, and shall remain, the property of the Buyer.

33.4 *Licenses*

- (a) The Seller hereby grants to the Buyer and its Affiliates a non-exclusive, assignable, irrevocable, royalty-free, perpetual, worldwide license (including the right to sub-

license) to use, copy, sub-license and exercise all rights in the Seller IP for any purpose in connection with the use, reproduction, operation, repair, maintenance or otherwise in respect of the Goods, Specifications, the Scope of Work or the PO Documents.

- (b) If any right, title or interest in Project IP vests in the Seller, the Seller hereby unconditionally assigns, and shall procure assignment of, such right, title and interest in the Project IP to the Buyer, at no cost, without need for any further assurance.
- (c) The Buyer hereby grants to the Seller a non-exclusive, non-transferable, revocable, royalty-free license for the term of the PO Documents to use the Buyer IP and Project IP for the sole purpose of performing and completing its obligations under and in accordance with the PO Documents.
- (d) The Seller shall, at the expense of the Buyer, execute all documents and do all other things in order to enable the Buyer, its Affiliates or its nominee to exercise its rights in relation to the Intellectual Property Rights being granted to the Buyer in accordance with this Clause.
- (e) In the event the use of any Seller IP or Project IP in the Goods, any part thereof, any process or component forming part of or contained in any of the Goods or in the reasonable contemplation of the Parties, is held to constitute an infringement of any third party's rights and its use is enjoined pursuant to any suit or proceeding, the Seller shall promptly, at its own risk, cost and expense either:
 - (i) procure for the Buyer the right to continue using such process or component; or
 - (ii) replace such process or component with a non-infringing process or apparatus of equal utility and efficiency to the satisfaction of the Buyer; or
 - (iii) modify such process or component in a way satisfactory to the Buyer, so that it becomes non-infringing.
- (f) In the event the Seller becomes aware of any suspected, threatened or actual infringement of any of the Buyer's IP or any Intellectual Property Rights of a third party due to incorporation of the Buyer's IP in the Scope of Work, the Seller shall notify the Buyer and shall:
 - (i) provide all assistance requested by the Buyer in relation to such claim; and
 - (ii) use its best endeavours to render the infringing material non-infringing in a manner acceptable to the Buyer.

33.5 *Representations and Warranties*

The Seller represents and warrants to the Buyer that:

- (a) it is the registered owner of or holds a valid license to all Intellectual Property Rights incorporated in the Goods, Drawings, Specifications and designs to be used in the Scope of Work and shall grant valid license in all such Intellectual Property Rights incorporated in the Goods, Drawings, Specifications and designs used in the

Scope of Work to the Buyer (for the purposes of the Project) without the Buyer incurring any liability or obligation;

- (b) it shall not infringe any Intellectual Property Rights, moral rights or any other rights of any person in the performance of the Scope of Work;
- (c) the Goods, the Project IP, the Seller IP and the use of them by the Buyer or its Affiliates, shall not infringe the Intellectual Property Rights, moral rights or any other analogous rights of any Person;
- (d) it has not granted and shall not grant any right, title or interest in the Scope of Work or the Intellectual Property Rights in the Scope of Work to any third party; and
- (e) there are no current or threatened claims or suits against the Seller or any of its Affiliates in connection with infringement of any Intellectual Property Rights that would materially adversely affect the Seller's ability to perform its obligation under the PO Documents.

33.6 Reproduction and Return of Documentation

- (a) Documentation owned or created by the Buyer relating to the Scope of Work may only be used, copied, supplied or reproduced by the Seller for the purposes of performing the Scope of Work, unless the Seller has obtained the prior written approval of the Buyer.
- (b) The Buyer shall have the unlimited right to translate, abridge and/or make as many copies of the Seller IP as are necessary for the Buyer's purpose in relation to the Scope of Work and the Goods.

34. Indemnity

34.1 The Seller shall defend, indemnify and hold the Buyer harmless from and against any and all Losses arising directly or indirectly from or incurred by reason of:

- (a) the acts or omissions of the Seller, its Affiliates, Sub-Contractors or any of their respective personnel during the performance of the Seller's obligations under the PO Documents, including any such Losses arising from injury to or death of any Person or damage to or loss of property;
- (b) hazardous materials introduced to the Site or any other location by the Seller, its Affiliates, Sub-Contractors or their respective personnel in the performance of the Scope of Work;
- (c) any failure of the Seller, its Affiliates, Sub-Contractors or their respective personnel to: (i) pay any Taxes relating to income or any other Taxes required to be paid by such Person; (ii) make any payments in respect of Taxes which are to be paid by such Person in connection with the performance of its obligations relating to the PO Documents; or (iii) comply with its obligations under Clause 6.1;
- (d) any infringement or alleged infringement of Intellectual Property Rights, which the Seller is not licensed to use as a part of the Seller IP or Project IP, or any claims,

suits or proceedings by a third party alleging that a proprietary right or copyright has been infringed by any use, copying, reproduction or distribution by the Buyer;

- (e) any breach of the PO Documents resulting from the acts or omissions of the Seller, its Affiliates, Sub-Contractors or any of their respective personnel during the performance of the Seller's obligations under the PO Documents;
- (f) non-compliance with Applicable Laws by the Seller, its Affiliates, Sub-Contractors or their respective personnel; and
- (g) any breach of representations, warranties or covenants given by the Seller, its Affiliates, Sub-Contractors or their respective personnel under or in relation to the PO Documents.

34.2 The obligation to indemnify stipulated in this Clause is a continuing, separate and independent obligation of the Seller and shall not be limited or reduced by any insurance, except to the extent that the proceeds of any such insurance are capable of being applied towards reduction of claims made against the Buyer.

34.3 *Defense of Claims*

- (a) The Seller shall, at its own expense, defend any suit or proceeding based on any claim asserted against the Buyer and indemnified under this Clause 34 or any other provision of the PO Documents.
- (b) The Buyer shall give the Seller such assistance as the Seller may reasonably require in the defence of such suit and shall have the right to be represented therein by counsel of its own choosing at its own expense.
- (c) If the Seller fails to defend diligently any such suit or proceeding, the Buyer may settle the claim, without the consent of the Seller and without relieving the Seller of its obligation to indemnify the Buyer.

35. **Limitation of Liability**

35.1 The aggregate liability of either Party, arising out of or in connection with the Scope of Work or the PO Documents, shall not exceed one hundred percent (100%) of the PO Price, provided that no such limit shall apply in respect of the Seller's liability for:

- (a) Losses resulting from any fraud, wilful misconduct or illegal or unlawful acts or omissions of the Seller or any Sub-Contractor or any of their respective personnel;
- (b) liquidated damages payable by the Seller under the PO Documents;
- (c) any amount which is recovered or recoverable under a policy of insurance effected under the PO Documents or which would have been recoverable had the Seller effected insurance in accordance with the terms of the PO Documents;
- (d) costs and expenses incurred with respect to rectification of any Defect or Latent Defect;
- (e) any claim pursuant to Clause 18; and

- (f) any Losses and claims pursuant to the breach of the Seller's indemnity obligations under the PO Documents.

35.2 Neither Party shall be liable to the other Party for any loss of use, loss of production or loss of profits or any other indirect or consequential damage, whether foreseeable or not, that may be suffered by the other Party.

36. Change in Law

36.1 The Seller shall, on or following the occurrence of a Change in Law, give notice of such Change in Law to the Buyer in accordance with the provisions of this Clause as soon as may be reasonably practicable. The notice served pursuant to this Clause shall provide, *inter alia*, details of the Change in Law and the effect thereof on the PO Documents. If the Buyer accepts the Change in Law proposed by the Seller, the PO Price shall be correspondingly increased or decreased, and/or the Delivery Schedule shall be adjusted to the extent that the Seller has been affected in the performance of any of its obligations under the PO Documents.

36.2 If due to such Change in Law, the Seller is entitled for any additional amounts, the same shall be paid to the Seller only against a claim supported by documentary evidence, to the satisfaction of the Buyer. If due to such Change in Law, the Buyer is entitled to recover any amount, the same shall be recovered from the Seller as a debt due and payable by the Seller to the Buyer.

37. Force Majeure

37.1 "**Force Majeure**" shall mean any event or circumstance or combination of events or circumstances in India which: (i) is beyond the reasonable control of the affected Party; (ii) the affected Party could not reasonably have anticipated or provided for before entering into the PO Documents; (iii) could not have been prevented by Good Industry Practice; (iv) is not suffered by a Sub-Contractor; (v) is unavoidable notwithstanding the reasonable care of the Party affected; and (vi) has not resulted from the negligence of the affected Party or the failure of such Party to perform its obligations under the PO Documents and which, or any consequence of which, has a direct, material and adverse effect upon the performance by the affected Party of its relevant obligations under the PO Documents and shall be restricted to the following events:

- (a) war, hostilities or warlike operations (whether a state of war be declared or not), invasion, act of foreign enemy, sabotage, terrorism and civil war;
- (b) earthquake, volcanic activity, fire, flood or inundation, tidal wave, typhoon or cyclone, hurricane, storm, lightning, or nuclear or other natural disaster, epidemic, pandemic, lock downs imposed by government authorities; or
- (c) ionising radiation or contamination or radio activity from any nuclear fuel or from any nuclear waste, from the combustion of nuclear fuel, radioactive toxic explosive, other hazardous properties of any explosive assembly or nuclear component.

37.2 Notwithstanding the foregoing, an event of Force Majeure shall not include:

- (a) any Site condition or event arising therefrom;
- (b) the occurrence of any manpower, material or equipment shortage;

- (c) inability to procure funding by the Seller;
- (d) any increase in cost, prices, rates, wages, commissions, fees, duties or other levies;
- (e) any hindrance created by any third party in respect of any access right or right of use in respect of the Site;
- (f) inability of a Party to pay any amounts due pursuant to the PO Documents;
- (g) conditions caused by the negligence or wrongful acts of the affected Party;
- (h) a breach of any provision of the PO Documents or any default or failure by a third party in any agreement entered into by the affected Party with such third party;
- (i) any delay, default or failure (direct or indirect) in obtaining materials, equipment or performing services by any Sub-Contractor, any workers or agents thereof, performing the Scope of Work or any part thereof; or
- (j) disruption of access to the Site due to road conditions.

37.3 If either Party is prevented, hindered or delayed from or in performing any of its obligations under the PO Documents by an event of Force Majeure, then it shall notify the other in writing of the occurrence of such event and the circumstances thereof immediately following the date of commencement of any event of Force Majeure and in any event within seven (7) days of the occurrence of such event. Such notice shall be a pre-condition to an affected Party claiming relief for an event of Force Majeure and, if such notice has not been provided, the affected Party shall be precluded from claiming any Loss pursuant to an event of Force Majeure.

37.4 The Party giving such notice shall be excused from the performance of its obligations under the PO Documents for so long as the relevant event of Force Majeure continues, and to the extent that such Party's performance is prevented, hindered or delayed. The Delivery Schedule shall be extended for the time period during which such event of Force Majeure exists and in such case both Parties shall mutually discuss and arrive at the further course of action for the performance of their respective obligations. The Party invoking such event of Force Majeure as a cause for such delay shall promptly submit to the other Party proof of the nature of such delay and its effect upon the time for performance of its obligations.

37.5 Delay or non-performance by either Party hereto caused by the occurrence of any event of Force Majeure shall not constitute a default or breach of the PO Documents or give rise to any claim for damages or additional cost or expense. However, the affected Party shall mitigate the effect thereof upon its performance of the PO Documents and to fulfil its obligations under the PO Documents, including recourse to alternate acceptable sources of the Goods and other equipment, but without prejudice to either Party's right to terminate the PO Documents under Clause 39.

37.6 If the performance of the PO Documents is substantially prevented, hindered or delayed for either a period of more than one hundred and twenty (120) consecutive days or an aggregate period of more than fifty percent (50%) of the total Delivery Schedule, on account of one or more events of Force Majeure during the currency of the PO Documents, the Parties shall attempt to develop a mutually satisfactory solution, failing which the Buyer may terminate the PO Documents by giving a notice to the Seller. In the

event of termination pursuant to this Clause, the rights and obligations of the Buyer and the Seller shall be as set out in Clause 39.3.

38. Suspension

38.1 The Buyer may, by issuing a notice to the Seller, order the Seller to suspend performance of any or all of its obligations under the PO Documents. Such notice shall specify the obligation of which performance is to be suspended, the date of suspension and the reasons thereof. The Seller shall forthwith:

- (a) suspend performance of such obligation (except those obligations necessary for the care or preservation of the Goods), until ordered in writing to resume such performance by the Buyer;
- (b) place no further subcontracts or orders for goods, supplies, services, work or facilities in respect of the Scope of Work, except to the extent expressly requested by the Buyer; and
- (c) unless otherwise directed by the Buyer, use all endeavours to suspend on the most favourable terms available to the Seller all orders, contracts, subcontracts and agreements to the extent affected by such suspension and otherwise minimise any additional costs associated with such suspension.

38.2 The Buyer shall issue orders for suspension or reinstatement of the PO Documents to the Seller in writing, as may be required. In the event of any suspension, the Delivery Schedule shall be extended suitably by the Buyer, which in any case shall not be more than for a period equal to the duration of suspension.

38.3 During a suspension, the Seller shall not be entitled to payment of the PO Price which would have otherwise been ordinarily payable during the relevant period of such suspension, except for such part of the Scope of Work which has been completed prior to the date of suspension specified in the notice of suspension. Upon resumption by the Seller of all activities affected by a suspension, the Buyer shall resume payments of the PO Price with the payment dates adjusted to reflect the period during which scheduled payments were not made.

38.4 The Buyer shall reimburse the Seller any necessary, reasonable, proper, verified and demonstrable costs incurred as a direct result of such suspension of the Scope of Work, provided such costs are substantiated to the Buyer's satisfaction. The Buyer shall not be responsible for any costs and liabilities, if suspension or delay is due to default by the Seller or its Sub-Contractors.

39. Termination

39.1 *Termination for the Seller's Default*

- (a) The Buyer may, without prejudice to any other rights or remedies it may possess, terminate the PO Documents forthwith and with no compensation, by giving a notice of termination, if the Seller:
 - (i) becomes bankrupt or insolvent, has a receiving order issued against it, compounds with its creditors, or, if the Seller is a corporation, a resolution is passed or order is made for its winding up (other than a voluntary liquidation

for the purposes of amalgamation or reconstruction), a receiver is appointed over any part of its undertaking or assets, or if the Seller takes or suffers any other analogous action in consequence of debt;

- (ii) assigns or transfers the PO Documents or any right or interest therein, except as provided under the PO Documents;
 - (iii) in the judgment of the Buyer, has engaged in corrupt or fraudulent practices in competing for or in execution of the PO Documents; or
 - (iv) delays performance of any obligation under the PO Documents, resulting in the maximum ceiling of the liquidated damages as stipulated in the PO Documents being reached.
- (b) The Buyer may, without prejudice to any other rights or remedies it may possess, terminate the PO Documents by giving the Seller a termination notice of fifteen (15) days, with no compensation to the Seller, if the Seller:
- (i) abandons or repudiates the PO Documents;
 - (ii) fails to commence work on the Scope of Work promptly or has suspended the progress of performance of its obligations under the PO Documents for more than thirty (30) days after receiving a written instruction from the Buyer to proceed;
 - (iii) fails to execute the PO Documents in accordance with the terms and conditions therein, or neglects to carry out its obligations under the PO Documents; or
 - (iv) refuses or is unable to provide sufficient materials, services or labour to execute and complete the manufacture and supply of the Goods in a manner specified in the programme furnished under Clause 10 at such rates of progress that give assurance to the Buyer that the Seller can complete Delivery in accordance with the Delivery Schedule or perform the Scope of Work in accordance with the timelines provided by the Buyer,

and the Seller fails to remedy, or to take steps to remedy, such default within fourteen (14) days of its receipt of a notice from the Buyer requiring the Seller to cure such default.

(c) Termination for Cross Default

The Seller agrees and acknowledges that the Seller and/or its Affiliates have been awarded separate purchase orders and/or service orders in addition to this Purchase Order. The division of the scope of work under the respective orders that are awarded to the Seller and/or its Affiliates, shall not be construed to limit their respective liabilities or responsibilities thereunder. The Seller further agrees that, in the event of any breach or default by the Seller and/or its Affiliates under any such order awarded to it, which would either result in a termination of or give rise to a termination right under such order, such breach or default shall be construed to be a breach or default under the PO Documents and the Buyer shall, without prejudice to any other rights or remedies as it may possess, have the right to terminate all the orders in accordance with the provisions of termination contained

under such other orders, at the risk and cost of the Seller, by giving a notice of termination to the Seller.

- (d) Upon receipt of the notice of termination under Clause 39.1(a), Clause 39.1(b) or Clause 39.1(c), as the case may be, the Seller shall, either immediately or upon such date as is specified in the notice of termination:
 - (i) cease all further work, except for such work as the Buyer may specify in the notice of termination for the sole purpose of protecting that part of the manufacture and supply of the Goods already executed;
 - (ii) Deliver to the Buyer the Goods (or parts thereof) manufactured by the Seller up to the date of termination;
 - (iii) terminate all sub-contracts, except those to be assigned to the Buyer;
 - (iv) to the extent legally possible, assign to the Buyer all rights, titles and benefits of the Seller to the Goods as on the date of termination and, as may be required by the Buyer, in any sub-contracts concluded between the Seller and its Sub-Contractors; and
 - (v) deliver to the Buyer all Drawings, Specifications and all documents prepared in connection with the Scope of Work by the Seller or its Sub-Contractor, as on the date of termination.
- (e) Upon such termination in terms of Clause 39.1, the Buyer may complete the Scope of Work for the manufacture and supply of Goods by itself or by employing any third parties in accordance with Clause 32.
- (f) Subject to Clause 39.1(g) below, the Seller shall be paid the PO Price attributable to the Goods (or part thereof) as executed by the Seller and accepted by the Buyer, as on the date of termination. If the Buyer instructs the Seller to provide for safekeeping of any Goods, any reasonable costs incurred by the Seller with respect to protection of the Goods shall be paid by the Buyer to the Seller. Any sums due to the Buyer from the Seller and accruing prior to the date of termination shall be deducted from any amounts to be paid to the Seller under the PO Documents.
- (g) Pursuant to termination of the PO Documents in accordance with Clause 39.1, if the Buyer completes the Scope of Work (or any part thereof) under the PO Documents, the cost of completing such Scope of Work by the Buyer shall be determined, as under:
 - (i) if the sum that the Seller is to be paid, pursuant to Clause 39.1(f), plus the reasonable costs incurred by the Buyer in completing the manufacture and supply of the Goods, exceeds the PO Price, the Seller shall be liable to pay to the Buyer such excess amounts incurred by the Buyer;
 - (ii) if such excess is greater than the sums due to the Seller under Clause 39.1(f), the Seller shall pay the balance to the Buyer; and
 - (iii) for termination due to the defaults by the Seller, the Buyer reserves the right to get the balance work done by other agencies at the risk and cost of the Seller.

39.2 *Termination for the Buyer's Default*

- (a) The Seller may, without prejudice to any other rights or remedies it may possess, terminate the PO Documents by giving a [thirty (30)] days' notice to the Buyer, if the Buyer:
 - (i) becomes bankrupt or insolvent, has a receiving order issued against it, compounds with its creditors, or, being a corporation, a resolution is passed or order is made for its winding up (other than a voluntary liquidation for the purposes of amalgamation or reconstruction), a receiver is appointed over any part of its undertaking or assets, or if the Buyer takes or suffers any other analogous action in consequence of debt, and the consequences thereof are not cured within a period of [ninety (90) days] of commencement of such proceedings or action, or are incapable of being cured; or
 - (ii) has failed to pay the Seller the amounts specified in any undisputed invoice as may have been invoiced by the Seller in accordance with the terms and conditions of the PO Documents and the Buyer has failed to remedy such default within [one hundred and twenty (120)] days after the receipt of the Seller's notice requiring the Buyer to remedy such default,

provided that, in the event the Seller does not terminate the PO Documents within a period of thirty (30) days after the expiry of the cure period set out in Clause 39.2(a)(ii), the Seller's notice of such remedial period shall lapse and the Seller shall not have the right to terminate the PO Documents without providing a fresh notice to the Buyer.

- (b) Upon issuing the notice of termination under Clause 39.2(a), the Seller shall take all measures as specified in Clause 39.1(d).
- (c) In the event of termination of the PO Documents under Clause 39.2(a), the Buyer shall pay to the Seller all payments specified in Clause 39.3(c).

39.3 *Termination for the Buyer's Convenience*

- (a) The Buyer may, at any time, terminate the PO Documents for any reason whatsoever, by giving the Seller a ten (10) days' notice of termination.
- (b) Upon receipt of the notice of termination under Clause 39.3(a), the Seller shall take all measures as specified in Clause 39.1(d).
- (c) In the event of termination of the PO Documents under Clause 39.3(a), the Buyer shall pay the following amounts to the Seller:
 - (i) the PO Price, properly attributable to the manufacture and supply of the Goods executed by the Seller and accepted by the Buyer, as on the date of termination; and
 - (ii) the reasonable cost of termination of sub-contracts between the Seller and its Sub-Contractors, subject to the Seller submitting documentary evidence of such termination to the Buyer's satisfaction.

39.4 In this Clause 39, in calculating any amounts due from the Buyer to the Seller, any sum previously paid by the Buyer to the Seller under the PO Documents, including any advance payment paid pursuant to the terms of payment under the PO Documents, shall be taken into account.

40. Governing Laws

The PO Documents shall be governed by and interpreted in accordance with the laws of the Republic of India. Subject to Clause 41.2, the courts at Ahmedabad, Gujarat, India shall have exclusive jurisdiction on all matters arising out of or relating to the PO Documents.

41. Settlement of Disputes

41.1 *Buyer's Representative*

If any dispute whatsoever arises between the Parties in connection with or arising out of the PO Documents, including without prejudice to the generality of the foregoing, any question regarding its existence, validity, termination or the execution of the Scope of Work, whether during the progress of the Scope of Work or after Delivery of the Goods and whether before or after the termination, abandonment or breach of the PO Documents, the Parties shall seek to resolve any such dispute by referring the matter to the Buyer's Representative. The Buyer's Representative shall provide his decisions within thirty (30) days of the referral of such dispute. Either Party, if not in agreement with the Buyer's Representative's decision, may proceed to resolve such dispute in accordance with Clause 41.2, within thirty (30) days of such decision.

41.2 *Arbitration*

- (a) If either the Buyer or the Seller is dissatisfied with the Buyer's Representative's decision, such dissatisfied Party may give notice to the other Party of its intention to commence arbitration as to the matter in dispute and no arbitration in respect of this matter may be commenced unless such notice is given.
- (b) Any dispute, in respect of which a notice of intention to commence arbitration has been given in accordance with Clause 41.2(a) above, shall be finally settled by arbitration in accordance with Clause 41.2(c) below.
- (c) Arbitration shall be conducted in accordance with the provisions of the Arbitration and Conciliation Act, 1996 and rules and regulations made thereunder, as amended from time to time. The venue of arbitration shall be [Ahmedabad, Gujarat, India].
- (d) The arbitration proceedings shall be conducted by a sole arbitrator appointed by mutual agreement of the Parties. In the event the Parties are unable to agree on the appointment of a sole arbitrator, each Party shall appoint one (1) arbitrator and the two (2) arbitrators so appointed shall appoint the third (3rd) arbitrator as the presiding arbitrator.
- (e) The arbitration shall be conducted in English and any award shall be made in English. The Parties agree that the decision and any award rendered by the arbitrator(s) in connection with a dispute shall be final and binding on the Parties.

- (f) The arbitration expenses shall be borne as provided in the award of arbitration. In the event the award is silent on the same, the arbitration expenses shall be borne by the losing Party.

41.3 Notwithstanding reference of any dispute to the Buyer's Representative or to arbitration herein, the Parties shall continue to perform their respective obligations under the PO Documents, unless otherwise agreed by the Parties in writing. Further, each Party agrees to pay to the other Party, all such undisputed amounts due under the PO Documents, provided that such amounts due are not a subject matter of such dispute.

41.4 Notwithstanding anything to the contrary contained herein but subject to Clause 41.2, the Seller acknowledges that damages may not be an adequate remedy for a breach of the PO Documents and that the Buyer shall have a right to seek injunctive relief or specific performance, as a remedy for any actual or threatened breach. The Seller agrees to the Buyer seeking grant of injunctive relief to restrain any conduct or threatened conduct which is or shall be in breach of the PO Documents or specific performance to compel the Seller to perform its obligations under the PO Documents, as a remedy for any actual or threatened breach which shall be in addition to any other remedies available to the Buyer.

42. Assignment

42.1 The Buyer shall be entitled to assign the whole or any part of the PO Documents or any benefit or interest herein without the Seller's consent. The Seller particularly consents to the grant and creation by the Buyer of a security interest in and assignment of the PO Documents and any and all of the Buyer's rights, titles and interests in and under the PO Documents in favour of any lender, security agent or trustee. In furtherance of and to give effect to such security interest and assignment, the Seller agrees to enter into such contracts, direct agreements, consents and deliver such legal opinions as are reasonably customary and as may be required by any of the lenders or their representatives.

42.2 The Seller shall not, without the prior written consent of the Buyer, assign the PO Documents or any benefit or interest in or under the SO Documents. Any such purported assignment shall be void.

42.3 In the event of an assignment, the Seller and the assignee shall be jointly and severally bound to the Buyer for the fulfilment of the provisions of the PO Documents.

43. Novation and Step-in Rights

43.1 Notwithstanding anything contained herein, the Parties agree and acknowledge that the Buyer's lenders shall be entitled to step into the obligations of the Buyer and substitute the Buyer under and in accordance with the financing arrangements entered into by the Buyer with such lenders, either by itself or through its nominated agencies.

43.2 In order to enable the Buyer to satisfy its obligations under this Clause 43.1, the Seller shall duly execute all such further instruments and documents, and do or procure to be done all such acts or things, as may be required to ensure that the terms of the PO Documents are complied with.

44. Project Funding

- 44.1 The Seller acknowledges that the times and method of payment provided for in the PO Documents have been fixed in contemplation that funds for the PO Documents will be made available through funding arrangements made with lenders. The Seller agrees that, if requested by the Buyer, it shall assist the Buyer, or parties designated by the Buyer, in the preparation of any studies or analyses required to obtain, make effective and maintain the effectiveness of such funding arrangements. The Seller agrees to supply such documentation and information as the Buyer may request to facilitate the applications for and to ensure compliance with any terms or regulations pertaining to such funding arrangements. The Seller agrees to cooperate with representatives of the Buyer, or other parties designated by the Buyer, in connection with the obtaining, maintenance, administration and disbursement of funds pursuant to such arrangements.
- 44.2 If funds are not available on the basis contemplated and as a result, payments to the Seller under the PO Documents are interrupted or delayed in a material way, then the Buyer and the Seller shall consult with one another to determine in good faith the alternative payment arrangements or procedures that may require to be implemented under such circumstances.
- 44.3 The Parties hereby acknowledge that the terms and conditions of the PO Documents may be subject to the approval of the lenders and agree to incorporate such revisions to the PO Documents as may be required without materially altering the commercial position agreed under the PO Documents. If as a result of a request from the lenders, changes to the PO Documents are required, the Parties shall incorporate such revisions as mandated by the lenders.

45. Confidentiality

- 45.1 All information including, without limitation, oral and written information, disclosed by the Buyer, the Buyer's Representative (including any experts appointed by the Buyer) or Buyer's personnel ("**Disclosing Party**") to the Seller, the Seller's Representative or any Person acting for and on behalf of the Seller ("**Receiving Party**") is deemed to be confidential, restricted and proprietary to the Disclosing Party ("**Confidential Information**").
- 45.2 Except as specified in the PO Documents, the Confidential Information supplied is not to be reproduced in any form except as required to accomplish the intent of, and in accordance with the terms and conditions of the PO Documents. The Receiving Party shall provide the same care as it provides to protect its own similar proprietary confidential information to avoid disclosure or unauthorized use of the Confidential Information. All Confidential Information shall be retained by the Receiving Party in a secure place with access limited to only such of the Receiving Party's personnel, employees or agents who strictly need to know such Confidential Information for the purposes of and exclusively for completing the Scope of Work, performance of obligations under the PO Documents and to such third parties as the Disclosing Party has consented to by prior written approval.
- 45.3 Unless otherwise specified in writing, all Confidential Information, including all copies thereof: (a) remains the property of the Disclosing Party; (b) shall be used by the Receiving Party only for the purpose for which it was intended; and (c) shall be returned to the Disclosing Party or destroyed after the Receiving Party's need for it has expired or upon request of the Disclosing Party, and, in any event, upon expiration or termination of the PO Documents. At the request of the Disclosing Party, the Receiving Party shall

furnish a certificate certifying that any Confidential Information not returned to Disclosing Party has been destroyed.

- 45.4 The Receiving Party further agrees not to reverse engineer any Confidential Information furnished by the Disclosing Party and shall not, without the prior written consent of the Disclosing Party, disclose to any other Person, the Confidential Information or the fact that the Confidential Information has been disclosed to it under the PO Documents, or any of the terms and conditions, status or other facts with respect thereto. For the purposes hereof, Confidential Information does not include information that:
- (a) is already published or otherwise available in public domain before it was communicated to the Receiving Party without any fault or negligence of the Receiving Party;
 - (b) prior to disclosure, was already in the Receiving Party's legitimate possession without having been obtained directly or indirectly from the Disclosing Party;
 - (c) is lawfully obtained from an independent source that had neither direct nor indirect obligation of confidentiality towards the Disclosing Party;
 - (d) is independently developed by the Receiving Party, by itself or through parties who have not had, either directly or indirectly, access to or knowledge of such information; or
 - (e) is obligated to be produced under order of a court of competent jurisdiction or other similar requirement of a Government Authority, provided that the Receiving Party provides the Disclosing Party with prior notice of such order or requirement for disclosure of such information.
- 45.5 The Confidential Information shall not be deemed to be within the categories of exceptions set out in Clause 45.4 above, merely because such Confidential Information is embraced by more general information in the public domain or in the Receiving Party's possession. In addition, no combination of features shall be deemed to be within the categories of exceptions merely because individual features are in the public domain or in the Receiving Party's possession. A combination of features shall only be deemed to be within the foregoing categories if the combination itself and its principles of operation are in the public domain or in the Receiving Party's lawful possession.
- 45.6 Prior to making any disclosure of Confidential Information to any Person, as permitted under the PO Documents, the Receiving Party shall procure that such Persons are: (a) made aware of the terms of the PO Documents; and (b) are either bound by professional responsibility to keep such information confidential or that such Persons agree in writing to keep such Confidential Information confidential on terms no less onerous than those contained in the PO Documents.
- 45.7 The Seller shall, and ensure that its personnel shall, comply with the Applicable Laws prohibiting insider trading and shall not, at any point in time, use the Confidential Information for the purposes of trading in the securities market, either by itself or through others.
- 45.8 Any document other than the PO Documents itself that contains Confidential Information, shall remain the Buyer's property and all copies thereof shall be returned to the Buyer upon completion of the Scope of Work.

46. Notices

- 46.1 All notices to be given by one Party to the other Party in connection with or under the PO Documents shall be made in writing in English, and shall be sent, at the addresses set forth in the Purchase Order or to such other addresses, as notified from time to time by the Parties to each other, by either one or more of the means namely personal delivery, registered post, courier, or electronic mail.
- 46.2 A notice shall be treated as having been received, if sent by:
- (a) hand, when its delivery is confirmed by a signature on behalf of the recipient;
 - (b) courier: (i) two (2) days after deposit with a reputed overnight courier if for inland delivery; and (ii) five (5) days after deposit with a reputed international courier if for overseas delivery;
 - (c) registered post then, when the registered post would, in the ordinary course of post, be delivered whether actually delivered or not; and
 - (d) email, when the sender receives an automated message confirming delivery (all electronic mail communication shall be followed by hand delivery, posting the courier or registered post in terms of Clauses 46.2(a), 46.2(b) and 46.2(c) hereof), provided always that the onus of proving deposit per Clause 46.2(b) hereof and posting by registered post per Clause 46.2(c) shall be that of the sender.
- 46.3 Notwithstanding anything contained in the PO Documents, no electronic mail communication shall be accepted as a legal notice or legal claim, unless it is additionally served at the appropriate address by hand, courier or by registered post.

47. Adjustments

- 47.1 The Seller agrees that the Buyer shall have a right to set-off payments due and payable to the Seller against payments due and receivable from the Seller in terms of the PO Documents. If the Buyer is unable to adjust or set-off any payments due and receivable from the Seller, the Buyer shall have the right to raise a credit note on the Seller to claim any reimbursements that may be due from the Seller.
- 47.2 It is agreed between the Parties that all payments by the Seller in respect of any payment obligations of the Seller in terms of the PO Documents shall be made without any deductions or set-off. If the Seller is prevented by Applicable Laws or otherwise from making, or causing to be made, such payments without deduction, the Seller shall gross-up such payments by such amounts as may be necessary for the Buyer to receive the full payments it would be entitled to receive, had such payments been made without such deduction.

48. Accounting Records and Audit

The Seller shall maintain proper and updated records of, and in relation to, all Goods supplied to the Buyer during the term of the PO Documents and for such period from the expiry or termination thereof as may be specified in the Purchase Order. The Buyer reserves the right to carry out regular audit and inspection of the Seller's records at any time during the term of the PO Documents without any notice in this regard. The Seller shall provide access to the Buyer to conduct such audits. In the event the Seller fails to

maintain regular and proper records and/or is in contravention of any Applicable Permits or Applicable Laws that require maintenance of such records, the Buyer shall have the right to suspend the performance of the PO Documents at the sole risk and cost of the Seller. The Seller agrees to fully indemnify, hold harmless and defend the Buyer from and against any and all Losses arising out of the Seller's failure to comply with this Clause 48.

49. Anti-Bribery and Anti-Corruption

The Seller covenants that neither the Seller nor the Seller's Representative, any of the Seller's Affiliates, Sub-Contractors, employees, agents or representatives shall make, offer or agree to give any bribe, commission, gift or inducement to: (i) any government official; (ii) any officer, employee, agent or representative of the Buyer or its Affiliates; or (iii) any other Person, in relation to the obtaining or execution of the PO Documents or performance of obligations hereunder. Such an act by the Seller, the Seller's Representative or any of the Seller's Affiliates, Sub-Contractors, employees or representatives shall, in addition to any criminal liability which the Seller may be subject to under Applicable Laws, provide a right to the Buyer to terminate: (i) the PO Documents in accordance with Clause 39.1(a); and/or (ii) any other contract that may have been entered into between the Parties. The Seller shall also be liable for payment of any Losses suffered by the Buyer due to any such termination, which the Buyer may, at its option, deduct and/or set off from the amounts otherwise due to the Seller under the PO Documents or any other contract or recover from the Seller as a debt due and payable. Any dispute as to the breach by the Seller of its obligations under this Clause shall be determined by the Buyer in such manner and on such evidence or information as available to the Buyer, and the Buyer's decision in this regard shall be final and conclusive.

50. Amendment

No modification of the terms of the PO Documents shall be effective unless it is in writing, is dated, expressly refers to the PO Documents and is agreed to and signed by duly authorised representatives of the Parties.

51. Constitution

The Seller shall not alter, modify or change its constitution, without the Buyer's prior written approval.

52. Language of Communication

All documents, writing and notices pertaining to and submitted in terms of the PO Documents and provided by one Party to the other shall be in the English language. If any writing or document, including any document issued or certified by any Person, is not in English, then it shall be translated into English and notarised, by the Party in possession of such writing and the English version of such writing shall govern and prevail.

53. Severability

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

The Parties shall then use all reasonable endeavours to replace the illegal, invalid or unenforceable provisions by a legal, valid and enforceable substitute provision, the effect of which is as close as possible to the intended effect of the invalid or unenforceable provision.

54. Independent Contractor

The Parties acknowledge and accept that the Seller shall act and perform its obligations under the PO Documents as an independent contractor and that the Seller shall not be regarded as an employee, agent or partner of the Buyer. The Seller shall not have any power or authority to enter into any contract, agreement or arrangement for or on behalf of the Buyer.

55. Conflicts of Interest

The Parties shall exercise reasonable care and diligence to prevent any actions or situations which could result in a conflict with the best interests of the other Party. The Parties shall not offer, give, solicit or accept an advantage or excessive entertainment to or from any of the employees or agents of the other Party and other business associates. Any Party who becomes aware of any violations of this Clause 55 shall immediately notify the other Party in writing.

56. Further Assurance

Each Party shall do, sign, execute, deliver and procure that each of its employees and agents does, signs, executes and delivers all deeds, documents, instruments and acts reasonably required of it or them to carry out and give full effect to the PO Documents and the rights and obligations of the Parties under it.

57. Costs

Each Party shall bear and is responsible for its own costs in connection with the negotiation, preparation and execution of the PO Documents.

58. Waiver

Any waiver of a Party's rights, powers or remedies under the PO Documents shall be in writing, dated and signed by such Party or its authorized representative granting such waiver. A Party granting such waiver shall specify the right and the extent to which it is being waived.

59. Survival

Notwithstanding anything to the contrary in the PO Documents, the termination, cancellation or expiration of the PO Documents for any reason shall not relieve either Party of any obligations or liabilities for Losses to the other Party arising out of or caused by acts or omissions of such Party, prior to the effectiveness of such termination, cancellation or expiration, as the case may be. The provisions of Clause 18.2 (*Cooperation and Coordination with Buyer and Other Contractors*), Clause 21 (*Insurance*), Clause 25 (*Liquidated Damages*), Clause 27 (*Defect Liability*), Clause 31 (*Representations and Warranties*), Clause 33 (*Intellectual Property Rights*), Clause 34 (*Indemnity*), Clause 35 (*Limitation of Liability*), Clause 39 (*Termination*), Clause 40 (*Governing Laws*), Clause 41 (*Settlement of Disputes*), Clause 45 (*Confidentiality*) and Clause 59 (*Survival*) shall survive termination, cancellation or expiration of the PO Documents, in addition to any



other provisions that by their content are intended to survive the performance, termination, expiration or cancellation of the PO Documents.

60. Entire Agreement

The PO Documents constitute the entire agreement between the Parties with respect to the Scope of Work set out thereunder and supersedes all prior agreements, understandings, negotiations, letters of intent/award and correspondence, whether oral or written, between the Parties, with respect to the Scope of Work.

Safety Requirements

The Employer is committed to achieve its goal of 'zero' - zero fatality, zero injuries and zero excuses. In order to achieve this, every Contractor is responsible and accountable to ensure zero tolerance to any violation with respect to the safety protocols of the Employer. In the process of undertaking the Scope of Work, the Contractor shall ensure strict compliance with applicable safety standard requirements and all business specific standards or procedures as may be provided by the Employer. In the event of any inconsistency between the provisions stipulated herein and the requirements specified in any other documents provided by the Employer, the provisions stipulated herein shall prevail, to the extent of such inconsistency. Critical safety requirements which are required to be complied by the Contractor are as follows:

1. Work Permit System (PTW)

The Contractor shall be familiar with permit requirements and shall be responsible for ensuring compliance with such permit requirements. No work shall be carried out without work permits authorized by the Employer unless exempted at the Site. There is an integrated work permit for all non-routine activities (except work pertaining to operation and maintenance which may have SAP generated PTW) which takes care of all related safety standards. The work permit shall be issued with a validity of only one shift which can be renewed shift-wise. However, the Employer shall have the right to issue the work permit for a longer duration, based on the nature of work. Except in the cases of routine jobs, where an integrated work permit is provided, no work permit shall be issued unless the Contractor has a written job safety analysis (JSA) approved by the Employer, preferably in the local language prevalent at the Site. All the non-routine work (except work pertaining to operation and maintenance) performed after 10pm shall require a separate 'night work permit' to be issued by the Employer and the same has to be procured and acknowledged by the Contractor. For avoidance of doubt, it is clarified that when night work is required a period of 'overlap' shall be scheduled such that the day and night engineers can discuss the work and align themselves on the Work to be performed under such night work permit. For Sunday and holidays, separate work permit shall be required which shall be authorized by the Employer's concerned line manager and/or safety officer.

2. Work at Height (W@H)

- 2.1. The Contractor shall have a written plan for W@H, in addition to the relevant certificate(s), certifying the right to W@H. Such plan shall ensure that:
 - (a) Height works above one point eight (1.8) metres have safe access, egress, and safe platform. Otherwise people shall be secured through use of full body harness with double lanyard including shock absorber and sufficient strengthened lifeline support.
 - (b) Working platform shall have handrail, mid rail and toe board. Certified horizontal lifeline shall be used, preferably 8mm wire rope.
 - (c) Working at more than five (5) metres (e.g. transmission tower, truck covering etc.), or requiring different body posture even at lesser height shall require "Fall Arrestor" (for vertical movement).
 - (d) Falling objects safety net shall be installed to arrest such objects.
 - (e) Step ladder / platform should be used if any personnel intends to work at height. Use of empty drums to climb up is banned. People taking tools for working at height shall have tool kits to facilitate three (3) point contact during access and egress.
 - (f) Employer's floor-hole cover policy shall be complied with and hole covers shall be fabricated as per such policy and design.
- 2.2. All the personnel involved in designing fall prevention measures or fall protection measures shall be subject to formal competency checks by the Contractor, prior to the personnel commencing the assigned work, to ensure that such personnel have the necessary training, experience and qualification to perform the assigned work. The Contractor shall also have a rescue plan in writing, which provides for, *inter alia*, the manner and mechanism in which all persons at the Site, including people working at a height, are to be rescued.

3. Scaffolds

Contractor shall ensure compliance with standard practices for all scaffold related activities. Some of them are:

- (a) Every scaffold and its support shall be of good construction and be of suitable and sound material and strength. Use of wood and bamboo scaffolds are banned.
- (b) All elevated structures/ working platform areas should be guarded on all sides with railings and toe board as described.
- (c) Scaffolds shall be designed to support at least four (4) times the anticipated weight of men and material. It shall have standard inclined ladder / staircase for access and egress.

- (d) Landing platform shall be provided at every nine (9) meters of height. Extra support can be taken from existing nearby structure. Maintain a safe distance from power lines.
- (e) Fall protection when erecting, dismantling, modifying scaffolds shall be under the direction of a competent person.
- (f) Scaffold shall be designed, erected, and certified for use by competent persons. Ready for use scaffolding shall be tagged with green board while other scaffolding shall be tagged with red tag and shall not be used pending certification.

4. Portable Ladders

4.1. The Contractor shall ensure that:

- (a) only commercially available and approved ladders of metal / aluminium / fibreglass are allowed to be used.
- (b) metal ladders shall not be used by persons performing electric welding or working near energized electric lines or services, unless otherwise approved in writing by the Employer for a specific job.
- (c) painted ladders are not permitted.
- (d) all ladders shall be inspected by a qualified person or inspection agency as per the statutory requirements or requirements of the Employer.
- (e) bends, dents, cracks, loose or missing rivets, disconnected braces, condition of steps and corrosion seriously weaken a ladder. Destroy or repair any defective ladders immediately in accordance with manufacturers' recommendations

5. Barricades and Signs

- 5.1. The Contractor shall furnish, erect and dismantle all barricades as required for indicating (warning) and protecting from hazards such as excavated area, opening of a platform, crane swing area, fabrication yard, overhead work, to carry out work on road and such other locations. Protective barricades shall be made of sheet metal or 40 NB pipe, painted with yellow and black stripes or red and white stripes, with caution signage on it and strong enough, to resist a force of one hundred (100) kilograms, for excavated pit more than one (1) metre depth. For warning, indicative barricades can be made of fluorescent tape, cable and ropes with signs affixed. No excavated pit shall be left unprotected or without signs indicating caution during the job till backfilling is completed. Caution tape shall be used to highlight hazards to other personnel that may need to access the area.
- 5.2. Any barricade must be at least one point five (1.5) meters from the edge of the excavation or opening. No overburden soil, or vehicle movement shall be allowed within one point five (1.5) m of an excavated pit.
- 5.3. Barricades, in areas with night traffic by vehicles or people, must be lit with warning flashers (red or yellow) every fifty (50) meters and there shall be caution boards and warning flags.

6. Confined Space (CS)

The Contractor shall:

- (a) confirm with site engineer about working in confined spaces and follow Site specific confined space entry procedure if any.
- (b) prepare safe entry procedure and obtain entry and work permits.
- (c) provide on the job training to persons entering into confined spaces and have stand-by person and rescue team for any incidents.
- (d) ensure proper ventilation (forced or exhaust), illumination using 24 V power supply
- (e) carry out checks for presence of toxic/ flammable gases, monitor the oxygen content in confined spaces and ensure availability of communication media between stand-by confined spaces attendant and people inside confined spaces
- (f) ensure availability of self-contained breathing apparatus or equivalent and use of all relevant personal protective equipment as per JSA and PTW.
- (g) ensure that all persons exit from the confined space upon completion of the work. To ensure such exit, head count of the men entering and exiting such confined spaces shall be performed and a record maintained in a register.

7. Excavation

- 7.1. Before an excavation begins, the Contractor shall verify Site specific conditions such as traffic, vibrations, proximity of structures, soil, surface water and groundwater, chemical contamination of water, water table, overhead and underground utilities along with Site map, weather condition etc.

7.2. Minimal precautions required are:

- (a) provision of high visibility jacket for persons exposed to traffic.
- (b) remove or stabilize all surface impediments including by way of removal of loose rock or soil that could fall and create hazards to persons.
- (c) erect either warning barricades (with depth of less than one (1) metres) or rigid, protective barricades (with depth of more than one (1) metre) to avoid leaving an excavation hazard unprotected. However, a spoil pile at least one point five (1.5) meter high can be used as a barricade on one side of the excavation.
- (d) keep spoil dirt and any material or equipment that may fall into an excavation at least one point five (1.5) meter from the edge.
- (e) Excavated pits deeper than one point five (1.5) meters will have a maximum height of vertical wall of one point five (1.5) meters with sloped edges at forty-five degrees (45°).
- (f) protect, support, or remove underground installations (e.g., electrical ducts, water lines, sewer lines, or fire lines).
- (g) prohibit personnel from working or passing under the loads of lifting or digging equipment inside the pit.
- (h) provide support systems such as shoring, bracing, or underpinning to ensure the stability of adjoining buildings, walls or structures, particularly if depth is more than one (1) metre. In such cases, confined space entry shall be obtained and safe access / egress path shall be provided.
- (i) that no worker shall be allowed to work alone in a trench at any time.

8. Hot Job

- 8.1. The Contractor shall obtain and adhere to written work permit while carrying out any hot work involving welding, cutting, brazing, polishing or heating a metal drum, barrel, or tank. Sealed container, cylinder etc. must not be welded or gas cut in any case.
- 8.2. All operators involved in hot work shall be trained on the hazard and risk control measures as per JSA and should be qualified. Flammable source must be removed or protected from heat using fire retardant mat(s). There shall be flash back arrester both at cylinder and torch, precaution related to gas cylinder safety shall be adhered to and welding machine shall be certified by Employer's electrical engineer for suitability and integrity. The Contractor shall not use AC transformer type welding machine and only generator / rectifier type machine shall be used. Electrical DB supply must be fitted with ELCB/RCCB set for thirty milli-ampere (30mA). Spatters generated from hot work must be arrested and the area shall be barricaded if hot work is performed at height. The Contractor shall ensure availability and use of recommended PPEs as outlined in the JSA and PTW. A trained fire watcher must be placed for all critical hot work. Job and machine grounding must be ensured. In case of hot job in Confined Space, atmospheric test must be carried out by an authorized person.
- 8.3. The Contractor shall provide fire extinguisher during hot work which shall be periodically inspected and checked for the purposes of being fit to use.

9. Electrical installation

The Contractor shall ensure that:

- (a) any temporary power distribution system including the source shall be designed and approved by Employer's electrical engineer.
- (b) all cables overhead should be more than two point five (2.5) metres on insulated or wooden support and no temporary cable shall be laid over the ground.
- (c) all electrical installations, distribution box and welding machines should be prominently marked for identifications with hazard signs and following information shall be provided: identification number, name of the Contractor/Subcontractor, source of incoming /outgoing power and danger sign in case of 440V DB.
- (d) power supply points are of adequate capacity, provided with proper switch and fuse arrangement and installed at strategic locations.
- (e) panel rooms/ distribution box pathways are clear and free from any obstructions.
- (f) while working near the live electrical conductors, arc flash suit of sufficient rating, as per JSA and PTW, shall be used.
- (g) temporary electrical installations must meet the same electrical code requirements as permanent installation, i.e. proper earthing, glands and seals at electrical boxes and cable repairs equal to the original cable insulation.

- (h) Earth Leakage Circuit Breaker (ELCB) or Residual Current Circuit Breaker (RCCB): earth protection for personnel on the Sites shall be provided by a thirty milli-ampere (30mA) ELCB/RCCB. It should not be replaced by MCB.
- (i) the Electricity Rules, 2005 and safety requirements specified under the applicable regulations issued by the Central Electricity Authority are complied with and the following are adhered to:
 - (i) engage a wire-man and technician or engineer (license holder) to work on all electrical installations;
 - (ii) ensure that only industrial type plug and sockets are used and proper earth is provided on electrical installations;
 - (iii) electrical distribution boxes are installed on mountings at predetermined locations with its nomenclature;
 - (iv) rain protections are provided on electrical installations and DBs;
 - (v) only three core double insulated cables are used for any temporary wiring or portable/ hand held tools or lightings;
 - (vi) use authorized cable jointers / connectors to join the cables;
 - (vii) handles/ body of portable electrical tools shall be of rubber or insulating material; and
 - (viii) electrical system shall be handled by a competent and authorized person for the voltage as per authorization and in line with the applicable statutory requirements.

10. Portable Tools and Equipment

- 10.1. The Contractor shall ensure that tools and equipment requiring a formal periodic inspection must be tagged, marked, labelled, tested, certified and calibrated (as applicable) to indicate that the formal inspection has been performed. All formal inspections must have inspection records. The Contractor shall be required to ensure use of all certified, adequately insulated, tested, checked and quality manufactured tools and tackles including cutting, brazing, welding, cutting torch, rock breaker, driller, lifting gear etc.
- 10.2. Any tools and equipment found defective or in need of inspection must be tagged with a "defective" tag and returned to the appropriate person for repair or inspection. The tool or equipment must be removed from the Site until repaired or inspected. All portable grinding / grinding equipment must have adequate and valid wheel, insulation, guard cover and good quality wire. The Contractor shall ensure that cables for all power tools shall be without any cable joints and 2 Pin/3 Pin shall be used for power connection.
- 10.3. Tool bags must be used for carrying and transporting all hand tools to the workplace. Standard tool tying arrangement (lanyard) must be made for all tools so that they can be tied with the nearest anchor point while working at heights to prevent fall of tool. Also, to avoid injury due to deflection of the tool while it is applied on a job, adequate attachments like D-Ring, short lanyard or any other inbuilt tethering arrangement must be applied.

11. Hoisting/ Mobile lifting equipment

- 11.1. The Contractor's personnel are forbidden to ride on any hook, load, or headache ball. Equipment operator certifications shall be submitted to the Employer's Site team. Unauthorized lifts (including tandem lifts) are not permitted. The Employer's site engineer must be notified prior to any critical lift (a critical lift is any lift that exceeds eighty percent (80%) of the design capacity of the lifting device/or exceeds 02 tons) being carried out.
- 11.2. All lifting equipment, tools and tackles and devices shall be tested, certified and maintained to manufacturer specifications. For man lift and other industrial lifts, the Contractor shall ensure that the Contractor, prior to deployment of the lifting equipment, tools and tackles and devices at the Site, procures a certificate from third party inspection agencies as per the statutory requirements, certifying the successful testing of such lifts at Site..

12. Lifting Equipment

- 12.1. The Contractor shall ensure that different man and material lifting equipment (different cranes, winch machine, hydraulic lift, etc.), tools and tackles proposed to be used at the Sites are suitable for the job and approved for use by the site team. The Contractor shall use the Employer's site checklist of different cranes / heavy vehicle etc. before hiring or bringing any such equipment to Site for use. After that the Contractor shall use periodic and daily checklist to ensure continued suitability. These equipment and tools should have all valid legal documents and maintenance record available with them. The operator shall have necessary statutory certification, training record on manufacturer's training and refresher training of every three (3) years with minimum experience of five (5) years in the job before coming to the Site. All cranes used at the Site must have safe load indicator, over run cut-off switch (anti-two block switch) and audio-visual alarms.
- 12.2. The safe working load, date of last testing and due date for next testing should be clearly marked on the body. Use of first-generation hydra at the Sites are banned.

- 12.3. All material lift job should have a documented plan as approved by the Site team and for any critical lifts (with weight of more than two (2) tons, as minimum normal practice but can be different as agreed by Site team) should have detail material lift plan validating soil compactness, crane placement, man and material locations, detail sling specification, angle of lift, approval and presence of competent mechanical engineer during lift. Critical lifts are normally not permitted at night at the Sites.

13. Machine Guarding

- 13.1. Contractor shall be responsible for ensure guarding of rotating machines adequately to prevent exposure of personnel.

14. LOTO

- 14.1. The Contractor's supervisor shall ensure that lock-out and tag-out is performed according to the plan and no personnel works beyond the facilities protected through lockout and danger tags.
- 14.2. All people involved directly or indirectly in the work associated with hazardous energy sources shall be involved in the control of these hazards. This involvement may include developing and / or reviewing the lockout plan, placing the locks and danger tag on isolation devices or group locks system or at least verifying the lock/tag on the equipment on which they are supposed to work. The Contractor shall ensure that its personnel will try to ensure proper isolation before allowing people to work on the equipment. After ensuring proper lock-out and tag-out, key to the lock shall be made available to the concerned supervisor or the engineer in-charge.

15. Winch Machine Safety

- 15.1. The winch machine shall be fit for the purpose in terms of its integrity, rope size, diameter and quality, brakes liners, electrical integrity, condition of isolators, double earth for motor and panels, overloading relay setting with respect to rated current of the motor, solid support in its installation –either through a concrete column or steel column. Machine shall be locked with the column with the help of wire rope or foundation bolt and shall have interlocking arrangement in case of sudden increase in speed. Total lifting process of the rope shall be done in the multiple of thirty (30) meters in case where height is more than thirty (30) meters.

16. Concreting

- 16.1. Formwork shall be in line with the current version of approved, released and accepted drawing. The Contractor shall be responsible for adherence to 'Bar Bending Schedule' and 'Concreting Plan' and shall submit and obtain approval for method statement, shuttering and staging plan including rebar spacing and chair design. Formwork shall be inspected by a competent person before pouring of concrete begins. All projected reinforcement bars shall be covered / bent when work is being carried out overhead. Any timber form work shall be carefully inspected for cracks and excessive knots before use. Tubular steel shall be inspected for rusting, dents, damaged welds etc. before it is erected. All vertical supports shall be vertically braced and cross bar support. Footings under the support shall be set on firm soil or other suitable materials which assures stability and the prop shall be of full length and not of two or three pieces joined together.
- 16.2. During pouring of concrete there should be continuous inspection of centring wedges and adjustment screws. Before removing the forms, the Contractor shall ensure that the concrete has developed sufficient strength to support itself and all loads that will be impinging on it.
- 16.3. Formwork structure shall have sufficient catwalks and other secure access for inspection.

17. Motor Vehicle

- 17.1. All motor vehicles to be used in the performance of the Scope of Work shall be strictly fit for the purpose. Following must be ensured: a valid driving license and vehicle insurance, adequate road worthiness (vehicles less than ten (10) years old for heavy vehicle and less than five (5) years for passengers vehicle, good tyre, engine condition, working front and back lights, horn and reverse horn, three (3) way mirrors, registration number clearly visible, good body condition, good brake system, fail safe brake system, retractable three (3) point seat belt, ABS and air bags for passenger vehicle). Vehicle should have periodic maintenance record as per OEM. The driver shall not be less than twenty five (25) years of age with minimum of five (5) years of driving experience with good eyesight. Drivers shall not be allowed to drive for more than twelve (12) hours. Vehicles utilised for hazardous goods transportation shall comply with all statutory obligation including approval from Chief Controller of Explosives, Transport Emergency (TREM) card and training.
- 17.2. Transportation of passengers shall only be permitted in the passenger compartment of vehicles. All the passengers and driver shall use seat belt irrespective of their sitting position and the driver shall not be driving using mobile phone or under influence of alcohol, drugs or any other narcotic or hallucinogenic substance.
- 17.3. The driver shall not exceed the posted speed limit. The speed limit on the Site for construction vehicles/ cranes is fifteen (15) km/h. Any load being dispatched from or received at the Site shall not exceed the carrying capacity of the vehicle.

- 17.4. Tractor trailers while being used for the work of the Employer shall not be used for transporting passengers unless agreed and approved by Site team. These tractors (with trailer/ tanker) shall be driven at a speed of less than twenty (20) KMPH or should have fitted speed governors, should have four (4) wheeled tanker with capacity more than two thousand (2000) litres. The tractor trolley connector pin (coupling) should be either auto-disconnector type or three sixty-degree (360°) rotation type.
- 17.5. Any mobile equipment like tanker/bowser deployed for material handling of fly ash or any other material shall comply to the minimum mandatory requirements as given below;
 - (a) Well-engineered working platform, railings, and fixed stairs with standard material for safe access to the top.
 - (b) All piping connections, valves at the loading/unloading station shall be clearly identified with name or other marking system to avoid wrong unloading operation. (Colour code as per IS 2379: 1990 standard - Compressed Air up to 15kg/cm² - Sky Blue)
 - (c) Any open-end pipes or hoses shall be capped, flanged, or plugged. Hoses shall be stored in a safe secure location. Transfer hoses shall be inspected for physical damage/deterioration before each use and should be hydrostatically or pneumatically tested annually at a test pressure (the recommended test pressure is 1.5 times the maximum working pressure). Compressor shall be fitted with high pressure control (doser) valve and safety relief valve.
 - (d) All tankers must be tested by competent person for;
 - (i) External examination - frequency once in six months
 - (ii) Hydraulic test (1.5 times working pressure) - frequency once in year
 - (iii) Shell ultrasonic test (>10 % deviation from tanker design thickness is not allowed)- frequency once in two year. Generally, shell thickness varies from 3 to 5 mm.
 - (e) For tanker/bowser loading and unloading operations, site working procedures must be followed to adhere to the working pressure requirements, use of pressure control valve and safety relief valve, etc.

17.6. **Securing of Heavy Loads during Transportation:**

While transporting heavy loads e.g., HR steel coils, other heavy machineries and equipment's, etc. the same needs to be adequately anchored and tied over any open trailer/ inside iron containers as deemed fit for the purpose in order to maintain adequate stability of the loads over the trailers/ inside the containers so as to avoid movement of loads in the event of jerks due to sudden acceleration or braking due to poor road conditions. Also, during loading of containers on trailer beds, containers must be locked on all ends as per arrangements provided at the trailer bed or by other possible means. Loaded trucks/ trailers which are not complying to the above requirements shall not be permitted to enter Employer's Site.

18. **Heavy Earth Moving Equipment (HEME)**

- 18.1. All HEME supplied or used at the Sites shall have all mandatory attributes for safe operation including rollover protection structure (ROPS), fall-over protection structure (FOPS), reverse and side camera, automatic reverse alarm, fire extinguisher, functional wipers, heating and air conditioning vent as applicable, illumination lamp etc. For enhancing the stability of truck tippers and prevent overturning, toppling or collision cases, it is mandatorily recommended to fix the following equipment's on any tipper used for Employer's Site.
 - (a) Tipping Inclinator/ Tilt Sensor/ Tilt Switch;
 - (b) Body Raised Warning System (BRWS) [Sound Alarm with Warning Lights]; and
 - (c) Load Indicator/ Payload Meter.
- 18.2. All HEME vehicles shall only be operated by a trained, competent, and certified Driver/ Operator who is authorized by Employer. Drivers/ Operators must be adequately trained in defensive driving techniques to get acclimatized with the hazards/risks to ensure that vehicles are kept away from over-head power line, not allowing anybody within 10 m radius from the vehicle etc. Driver shall be required to stop engine and come-out from cabin for any discussion. Wearing all PPEs, movement against edge from trenches / excavated area, parking the vehicle with all levers in locked condition and daily and periodic inspection by the operator shall be mandatory and should be trained accordingly.

19. **Concrete Vibrators**

- 19.1. Vibrating unit shall be completely enclosed and belt transmitting the power to the unit adequately guarded. Electrically operated compactor vibrators shall be totally enclosed and be protected against overloads by suitable overload relays and shall be effectively earthed. Sufficient length of cable to the vibrator shall be ensured. Needle load shall be firmly locked while inserting in the vibrator and inner core shall be adequately lubricated.

20. **Concrete Mixers**

- 20.1. All gears, chains and rollers of concrete mixer should be adequately guarded to prevent damage / danger.
- 20.2. Concrete mixer hopper shall be protected by side railing to prevent workers from passing under them and operators shall make sure before lowering the skip bucket that no one is there. Hopper hoist, wire rope and anchoring brake, skip hoist clutch, must be checked for its condition and adjusted periodically. Nothing should be kept inside the motor enclosure.
- 20.3. The Operator shall ensure that motor fan guard is secured firmly, wiring is properly connected and insulated and double earthing is done for electric mixers.

21. Access Control Security System

The Contractor shall be responsible to provide valid identity card as approved by the Employer's site team to its personnel. This should indicate basic detail about the Contractor's personnel. These should be issued only when the Contractor's personnel have attended safety orientation / induction and passed health screening.

22. Personnel Access, Vehicle and Material/Equipment Movement Control

- 22.1. All personnel, vehicles and materials moving in and out of the Site shall move only through the designated security checkpoints.
- 22.2. All personnel must register their ingress and egress by going through the security checkpoint to ensure that they are accounted for.
- 22.3. Materials/equipment moving in and out of the Site shall be accompanied by approved gate pass.
- 22.4. All personnel bringing their property such as personal computers, tools, equipment and samples must declare at the security check points using the Material/Equipment Gate Pass before entering the Site.
- 22.5. Approval will be required from the authorized signatories before bringing out any personal property from the Site which was not previously declared at the security checkpoints.

23. Education and Training

- 23.1. All Contractors, and Subcontractors are required to attend Site safety orientation/induction training, prior to entry to the Site.
- 23.2. The information provided during the orientation shall include:
 - (a) Job rules, personal safety and conduct;
 - (b) Adani Life Saving Safety Rules, hazards reporting;
 - (c) reporting of injuries/pre-existing conditions; emergency procedures;
 - (d) working with chemicals;
 - (e) fire-fighting;
 - (f) safety activities and program including disciplinary measure and incentives; and
 - (g) JSA and PTW as outlined above.
- 23.3. Site and job specific training shall be imparted as per the Specifications.

24. Appointment of Safety Resources, Supervisors and Safety Stewards

- 24.1. The Contractor shall appoint necessary and agreed competent safety resources for the job. The Contractor shall ensure availability of one safety supervisor in case of up to one hundred (100) deployed personnel and an additional safety supervisor for personnel numbering between one hundred (100) and two hundred (200). However, if deployed personnel are more than two hundred (200), then a minimum of one safety officer is required to be deployed and for every additional one hundred (100) personnel, an additional safety supervisor shall be required. The Contractor should also deploy trained safety stewards at the rate of one for every fifty (50) personnel for ensuring safety vigilance.

25. Supervisor's Role in Worker's Orientation

- 25.1. The attitude of personnel toward accident prevention depends a great deal upon the attitude of the supervisor and therefore the following action steps shall be taken as a part of the supervisor's orientation of a new worker:
 - (a) Ask about last job and describe the new job;
 - (b) Show worker around work area;
 - (c) point out hazards;

- (d) introduce worker to others and describe basic rules;
- (e) procure history of previous training and provide understanding on JSA;
- (f) Give worker a test run on tools and equipment;
- (g) monitor new personnel's safety, health and environmental performance;
- (h) provide coaching where necessary; and
- (i) check back to see how the worker is progressing.

25.2. The Contractor shall establish systems to check competency of skilled worker / supervisors.

26. Pre-Employment Site Personnel

Contractor shall ensure appointment of personnel for the Site (engineers/ supervisor/ and skilled/ semiskilled/ unskilled tradesmen) based on such personnel's previous performance and background. The said personnel shall possess the desired licenses issued by the governmental authorities or competent person; electrician wireman, driving (LMV/HMV), equipment operators, radiography, sand blasting or any other as per statutory requirement.

27. Pre- Employment Medical check up

- 27.1. The Contractor shall carry out a pre-employment medical check-up for all its personnel and shall be able to produce the certificate of fitness to the Employer prior to the deployment of such personnel at Site. The Contractor shall also organize periodical medical check-up (six monthly) for the following category persons:
- (a) drivers and equipment operator: check for vision and hearing.
 - (b) height workers: check for vision, hearing, vertigo and acrophobia.
 - (c) dangerous substances handlers: effect of chemicals and substances.

28. Personal Protective Equipment (PPEs) Protocol

- 28.1. The Contractor shall ensure availability and use of suitable quality personal protective equipment to its personnel. Use of safety helmets, safety shoes, high visibility jackets and safety eye wear shall be mandatory. Based on the job requirement, other PPEs like gum-boot, electrically insulated hand gloves, electrical safety shoes, respiratory mask for dust nuisance or other chemical fumes protection, hand gloves or leather hand gloves, full body harness with lifeline support, retractable fall arrester, safety net, PVC suit, arc flash suit, cotton blue dress, flame retardant cloths, welder's masks with suitable screen numbered visor, gas cutter goggles, runner etc., shall be used as indicated in Work Permit and Job Safety Analysis.
- 28.2. All the PPEs used by the personnel shall, at all times, be in accordance with at least one of the following internationally recognized standards: (i) ANSI; (ii) ISO; (iii) BS; (iv) IS or (v) EU. The Contractor shall take prior approval of the Employer, for any deviation in the PPE standards proposed to be used for the performance of the Scope of Work.

29. Working Over or Near to Water Bodies

- 29.1. The Contractor shall comply with Employer's standard requirement on working over or near to water bodies including medical suitability, necessary statutory certification, use of life jacket, involving skilled team, rescue system in case person falls in the water and use of insulated powered tools.

30. Pre-Startup Safety Reviews (PSSR)

- 30.1. PSSR is a process to validate whether: (i) the construction and equipment installed are in accordance with design specifications, (ii) the risks associated with operation of the plant has been identified, studied and discussed, (iii) the preventive and corrective actions have been completed, and (iv) any emergency actions which can be required, has been understood, documented and that the plant / facility is complete in all safety aspects, before the start-up of the facility. The Contractor shall be responsible to re-work based on the findings coming out of the PSSR.

31. Notice Boards/ Caution Boards/ Safety Awareness Boards

- 31.1. There must be a safety board which must contain following items:- manpower numbers; date of last incident occurred; total number of injuries, incidences and near-miss case reporting; million man-hours injury free recorded; and details of contact persons in case of emergency, 'Current Severity Index', and numbers of 4s and 5s severity unsafe acts and conditions.
- 31.2. The Contractor shall also display a Site layout, indicating the project manager's details, Contractor's details, job details, date of start and expected end date of job, path-way, first-aid post, drinking water, change room, toilet, entry and exit point, parking etc. A general background colour coding of different messages are: **blue – mandatory, red - prohibited, yellow - danger, green - safe condition.**

32. Safety Awareness Campaign/ Program

- 32.1. The Contractors are encouraged to organize safety promotional programs in support of the Employer's program. The Employer's team at Site shall provide the appropriate emergency rescue, first aid and medical staff, facilities and procedures necessary to respond to anticipated onsite emergencies.

33. Medical/First Aid Treatment

- 33.1. The Contractor shall maintain first aid box and/or medical centre as per statutory requirement and shall have a tie-up with nearby good specialty hospital to manage medical emergencies. A medical attendant shall administer first-aid care to injured personnel using established standards of practice, or as directed by the local consulting physician. When an injury occurs at the Site and requires treatment beyond the limits of the medical attendant, the Contractor shall ensure that such personnel is transported to the nearest hospital.
- 33.2. If the Employer has a first-aid centre and other similar facilities at the Site, the Employer may, at its option, make available such facilities for the treatment of the Contractor's personnel, who have been injured or have become ill while being engaged in the performance of the Scope of Work.

34. Accident Investigation and Reporting

- 34.1. The Employer's policy requires that all incidents and environmental releases, regardless of severity, are reported immediately to the Employer's project manager and safety manager first by verbal and then by a written "preliminary" First Incident Report (FIR). Subsequently, a joint written investigation should be conducted by incident investigation team, with an initial report issued in writing within twenty-four (24) hours, even where no injuries occur. The Employer's team shall record these incidents online at the Adani Gensuite or such other platform designate by the Employer.
- 34.2. Where the actual or potential severity of the incident or behaviour is significant or occurs frequently, the Project Head shall appoint a committee to investigate, the accident/incident, verifying the information and complete a root cause analysis. All corrective actions shall be carried out, monitored by the project/construction SHE Department and initialled/dated on the original report.

35. Contractor Inspections and Audits

- 35.1. The Contractor/Subcontractors' supervisors are responsible for ensuring that regular inspections are made of work areas / activities. Project safety managers or their designates shall regularly audit project facilities and report deviations to Employer. This audit shall also involve the 'Safety Risk Field Audit' (SRFA) based on the severity index.

36. Contractor Safety Assurance Audit

- 36.1. Copies of the 'Weekly Safety Risk Field Audits' (SRFA) and inspection reports shall be forwarded to the respective project manager and to Contractor's site management for corrective actions. The respective Contractor site management must take immediate corrective actions as may be required.

37. Daily/Periodic Safety Inspection

- 37.1. The Contractor and Site supervisors shall conduct routine periodic safety inspections and monitoring. Inspections shall make note of; hazardous material, unsafe acts/conditions observations and corrections, equipment, rigging, electrical, scaffolding, ladder inspections, etc.

38. Safe-Work Practice Assessments

- 38.1. The project safety managers shall conduct periodic assessments of compliance with site safety practices and procedures to ensure that such site safety practices and procedures are effective and are being followed.

39. Fire Prevention and Protection

- 39.1. Fire prevention policies of the Employer require prevention and mitigation training on fire emergency, segregated storage area for flammable and combustible material, safety in welding and burning operation, high risk welding operations, etc. and shall be complied with by the Contractor.

40. Hazard Communication

- 40.1. The Contractor shall ensure correct hazard communication to working team on - hazardous chemicals and their safety data sheets, precautions while handling and storage of gas cylinder, performing hot job, entering and working in confined space, working in an excavated pit, identify and correct use of quality personal protective equipment, high noise and vibration. These communications should be carried out through verbal, written, JSA, Work Permit, training, tool box talk, symbol display, practical display and mock demonstration.

41. Housekeeping Guidelines

- 41.1. The Contractors shall be responsible for maintaining very high standard of housekeeping including clearly defined walkways and stairways, keeping clean unobstructed pathway free of tripping hazards, prohibit storage of materials and

equipment in aisles or under stairways, posting signs or barricades to warn tripping or slipping hazards, maintaining adequate lighting, having well-marked first aid/assembly points and not allowing loose material at height (placing them in cage/box).

(a) Storage Areas

The Contractor shall clearly identify purpose of area and define boundary by barricades, provide adequate size as per provision and discourage excess material and equipment. All material shall be stored in a neat, safe and orderly fashion with proper labelling.

(b) Trash removal plan

All Contractors shall ensure that trash is removed, accumulated and dumped at the designated disposal area on a daily basis. Collected trash and bins shall be cleared once a week to identified dumping area. No trash shall be thrown from height and shall be handled through a chute. As a best practice, the Employer appreciates the concept of "generator should be the cleaner".

(c) Rest Rooms and Drinking Water

The Contractor shall ensure availability of toilet facility and drinking water for their personnel in a hygienic manner as per the statutory requirements. These facilities should be separate for all genders. If the Employer has developed such facilities at the Site, the Employer may, at its option, make available such facilities to the Contractor's personnel.

42. Governance System

42.1. The Contractor shall be responsible for constituting a site level safety committee involving management and workmen under chairmanship of the Contractor's site in-charge and shall review safety performance including leading (training, severity index, reported UA/UC/NM cases) and lagging indicators (FAC, MTC, RWC, 'Lost Time Injuries', 'High Potential Incidences' etc.) on a weekly basis. The committee shall be responsible for submitting safety related MIS to the concerned site in-charge.

43. Emergency Response Plan

43.1. The Contractor shall prepare an emergency plan in line with foreseen emergency situation and shall be communicated to its staff as part of training. The preparedness should be checked for its effectiveness by conducting mock-drill. The emergency plan shall be approved by the Site In-charge.

43.2. An emergency rescue plan along with adequately trained team must be in place while working at height, working in confined spaces, hot job etc. The Contractor shall submit such emergency rescue plan to the Employer for inclusion in the site-specific emergency response procedure.

44. General

44.1. The Contractor shall provide proper illumination at the work location as per the statutory requirements and/or the requirements of the Employer.

44.2. The Contractor shall coordinate and procure requisite approvals from the statutory authorities prior to any blasting work that is to be executed at the Site.

44.3. Labour Camp (if applicable): The Contractor shall, and shall procure that its personnel shall, ensure compliance with the requirements pertaining to health and sanitation, including requirement of maintaining hygiene on Site. The Contractor shall be responsible to comply with all the statutory EHS requirements inside the labour camp.

45. Reward and Damages for Safety Violations

45.1. In case of any violation by the Contractor with respect to the safety requirements specified herein, the Employer can levy the following liquidated damages:

- (a) Violation with respect to lack of valid gate-pass, basic PPEs and/or other traffic violations: Indian Rupees One Thousand Only (INR 1000) per violation.
- (b) Violation with respect to work at height, electrical, confined space entry, excavation, hot jobs, barricading, heavy motor vehicle, crane: Indian Rupees Five Thousand Only (INR 5000) per violation with a ceiling of Indian Rupees One Lakh Only (INR 1,00,000) per contract exceeding which the Employer can terminate the Contract.
- (c) Fatal accident: Indian Rupees Fifteen Lakhs Only (INR 15,00,000) or five percent (5%) of the SO Price, whichever is less, for the first fatality and Indian Rupees Twenty Lakhs Only (INR 20,00,000) or five percent (5%) of the SO Price, whichever is less, for the second fatality. For any further fatalities, the Employer may at its discretion levy appropriate damages or may choose to terminate the SO Documents/SO at the risk and cost of the Contractor.

- (d) Lost time injury (on 24 hours basis) or non-reporting of incidents: Indian Rupees Fifty Thousand Only (INR 50,000) for each lost time injury or incident not reported.
 - (e) Serious (grievous) injury, such as loss of limb or a loss of more than twenty one (21) man-days: Indian Rupees Five Lakhs (INR 5,00,000) or five percent (5%) of the SO Price, whichever is less, for the first grievously injured person; and Indian Rupees Seven Lakhs (INR 7,00,000) or five percent (5%) of the SO Price, whichever is less, for every subsequent grievously injured person. For the purpose of levying these damages, "grievous injury" shall have the meaning ascribed to the term in the Employee's Compensation Act, 1923.
 - (f) Dangerous occurrences: Indian Rupees One Lakh (INR 1,00,000) or five percent (5%) of the SO Price, whichever is less, for the first violation and Indian Rupees Two Lakh (INR 2,00,000) or five percent (5%) of the SO Price, whichever is less, for subsequent violations.
 - (g) Procedural violation, including absence of method statement, staging and shuttering plan, concreting plan, erection/dismantling plan or non-compliance with any statutory requirement: Indian Rupees Fifty Thousand (INR 50,000) or zero-point zero five percent (0.05%) of the SO Price.
 - (h) Any incident involving injury to a member of the public: Indian Rupees Fifty Thousand (INR 50,000) or five percent (5%) of the SO Price, whichever is less for first violation and Indian Rupees One Lakh (INR 1,00,000) or five percent (5%) of the SO Price, whichever is less, for subsequent violations.
- 45.2. There will be a reward system for reporting and correcting UA/UC/NM cases, achievement of targeted severity index and excellent contribution in maintaining safety and housekeeping.