

# Request for Proposal

For

Design and Development of Deepor Beel on EPC Mode at  
Jalukbari in Guwahati, Assam

## Volume III: General Conditions of Contracts (GCC) & Special Conditions of Contracts (SCC)



Guwahati Smart City Limited  
04<sup>th</sup> Floor, Aditya Tower, Opp. - Down Town Hospital  
G.S Road, Guwahati, Assam-781006  
Email: [mdsmartguwahati@gmail.com](mailto:mdsmartguwahati@gmail.com)  
Telephone: 6913104033 (o)

Tender No:

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2	Vol-II	Scope of Works, Technical Specifications & Drawings
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# CONDITIONS OF CONTRACT

## A. GENERAL

### 1 Definitions

- 1.1 Terms, which are defined in the Contract Data, are not also defined in the Conditions of Contract but keep their defined meanings. Capital initials are used to identify defined terms.

Bid means the Contractor's priced offer to the Employer for the execution and completion of the Works and the remedying of any defects therein in accordance with the provisions of the Contract, as accepted by the Letter of Award. The word 'Tender' is synonymous with 'Bid' and the word 'Tender Documents' with 'Bidding Documents'.

Bill of Quantities means the priced and completed Bill of Quantities forming part of the Bid.

Compensation Events are those defined in Clause 49 hereunder.

The Completion Date is the date of completion of the works as certified by the Engineer in accordance with Sub-Clause 57.1.

The Contract is the contract between the Employer and the Contractor to execute, complete and maintain the Works. It consists of the documents listed in Clause 2.3 below.

The Contract Data defines the documents and other information, which comprise the Contract.

The Contractor is a person or corporate body whose Bid to carry out the Works has been accepted by the Employer and who entered with an agreement with GSCL and includes its successor(s) in interest with the consent of the Employer.

The Contractor's Bid is the completed bidding document submitted by the contractor to the Employer and includes Technical and Financial Bids.

The Contract Price is the price stated in the Letter of Acceptance and thereafter as adjusted in accordance with the provisions of the Contract.

Days are calendar days; Months are Calendar months.

A Defect is any part of the Works not completed in accordance with the Contract.

The Defects Liability Period is the period named in the Contract Data and calculated from the Completion Date.

Drawings means all good for construction drawings to be prepared by the Contractor under the Contract and all drawings, calculations, samples, patterns, models, operation and maintenance manuals and other technical information of a like nature submitted by the Contractor and approved by the Engineer.

The Employer means "Managing, Director, Guwahati Smart City Limited (GSCL) having office at "Guwahati Smart City Limited, 04th Floor, Aditya Tower, Opp. - Down Town Hospital G.S Road, Guwahati, Assam-781006, represented through its MANAGING DIRECTOR and includes its successor(s) in interest, the party who will employ the Contractor to carry out the Works.

The Engineer is the person names in the Contract Data (or any other competent person appointed and notified to the Contractor to act in replacement of the Engineer) who is responsible for supervising the Contractor, administering the contract, certifying payments due to the Contractor, issuing and valuing Variation to the Contract, awarding extensions of time, and valuing Compensation Events.

Equipment is the Contractor's machinery and vehicles brought temporarily to the Site to construct the Works. The Initial Contract Price is the Contract price listed in the Employer's Letter of Acceptance.

The Intended Completion Date is the date on which it is intended that the Contractor shall complete the Works. The Intended Completion Date is specified in the Contract Data. The Intended Completion Date may be revised only by the Engineer by issuing and extension of time.

Materials are all supplies, including consumables, used by the contractor for incorporation in the Works.

Plant is any integral part of the works, which is to have a mechanical, Electrical, Electronic or Chemical or Biological function.

The Site is the area defined as such in the Contract Data.

Site Investigation Reports are those, which were included in the bidding documents and are factual interpretative reports about the surface and sub-surface conditions at the site.

Specification means the specifications of the works included in the contract and any modification or addition made or approved by the Engineer.

The Start Date is given in the Contract data. It is the date when the contractor shall commence execution of the works. It does not necessarily coincide with any of the Site Possession Dates.

A Sub-Contractor is a person or corporate body who has a contract with the Contractor to carry out a part work in the contract, which includes work on the site.

Temporary works are works designed, constructed, installed, and removed by the Contractor, which are needed for construction or installation of the works.

A Variation is an instruction given by the Engineer, which varies the works.

The Works are what the contract requires the contractor to construct, install, and turn over to the Employer, as defined in the contract data.

## 2 Interpretation

- 2.1 In interpreting these conditions of contract, singular also means plurals, male also means female or neuter and the other way around. Headings have no significance. Words have their normal meaning under the language of the contract unless specially defined. The Engineer will provide instructions clarifying queries about the conditions of the contract.
- 2.2 If sectional completion is specified in the Contract Data, references in the conditions of contract to the works, the completion date, and the intended completion date apply to any section of the works (other than references to the completion date and intended completion date for the whole of the works).
- 2.3 The documents forming the Contract shall be interpreted in the following order of priority:
  - a) Agreement
  - b) Letter of Acceptance, notice to proceed with the works
  - c) Contractor's Bid
  - d) Contract Data
  - e) Condition of Contract including Special Conditions of Contract
  - f) Specifications
  - g) Bill of Quantities and
  - h) Any other document listed in the Contract Data as forming part of the Contract

## 3 Language and Law

- 3.1 The language of the Contract and the law governing the Contract are stated in the Contract Data.

## 4 Engineer's Decisions

- 4.1 Except where otherwise specifically stated, the Engineer will decide contractual matters between the Employer and the Contractor in role representing the Employer.

## 5 Delegation

- 5.1 The Engineer may delegate any of his duties and responsibilities to other people after notifying the Contract and may cancel any delegation after notifying the contractor.

## 6 Communications

- 6.1 Communications between parties which are referred to in the conditions are effective only when in writing. A notice shall be effective only when it is delivered (in terms of Indian Contract Act).

## 7 Subcontracting

- 7.1 No sub contracting shall be permitted other than vendor supply items with installations and commissioning, which shall be done with the prior consent of the Engineer. Any such consent shall not relieve the Contractor from any liability or obligation under the Contract in respect of or in relation to the subcontracted works and he shall be responsible for the acts, defaults and neglects of any Subcontractor, his agents, servants or workmen as fully as if they were the acts, defaults or neglects of the Contractor, his agents, servants or workmen.

Provided that the Contractor shall not be required to obtain such consent for:

- a) the provision of labour, or
- b) the purchase of materials which are in accordance with the standards specified in the Contract, or
- c) the subcontracting of any part of the Works for which the Subcontractor is named in the Contract.

## 8 Personnel

- 8.1 The Contractor shall employ the Key Personnel named in the Schedule of Key Personnel as referred to in the Contract Data to carry out the function stated in the schedule or other personnel approved by the Engineer. The Engineer will approve any proposed replacement of Key Personnel only if their Qualifications, Abilities and Relevant Experience are substantially equal to or better than those of the personnel listed in the schedule.
- 8.2 If the Engineer asks the Contractor to remove a person who is a member of the contractor's staff or his work force stating the reasons the contractor shall ensure that the person leaves the site within 7 days and has no further connection with work in the contract.

## 9 Employer's and Contractor's Risks

- 9.1 The Employer carries the risks which this contract states are Employer's risks and the Contractor carries the risks which this contract states are contractor's risks.

## 10 Employer's Risks

10.1 The Employer is responsible for the excepted risks which are (a) in so far as they directly affect the execution of the works in India, the risks of War, hostilities, invasion, act of foreign enemies, rebellion, revolution, insurrection or military or usurped power, civil work, riot commotion or disorder (unless restricted to the contractor's employees) and contamination from any nuclear fuel or nuclear waste or radioactive toxic explosive or (b) a cause due solely to the design of the works, other than the contractor's design.

## 11 Contractor's Risks

11.1 All risks of loss of or damage to physical property and of personnel injury and death which arise during and in consequence of the performance of the contract other than the expected risks are the responsibility of the contractor.

## 12 Insurance

12.1 The Contractor shall provide in the joint names of the Employer and the Contractor, insurance covered from the Start Date to the end of the 3 years of maintenance period in the amounts and deductibles stated in contract data for the following events which are due to the contractor's risks:

- a) Loss of or damage to the Works, Plant and Materials;
- b) Loss of or damage to Equipment;
- c) Loss of or damage of property (except the Works, Plant, Materials and Equipment) in connection with the Contract; and
- d) Personal injury or death.

12.2 Policies and certificates for insurance shall be delivered by the Contractor to the Engineer for the Engineer's approval before the Start Date. All such insurance shall provide for compensation to be payable in the types and proportions of currencies required to rectify the loss or damage incurred.

12.3 If the Contractor does not provide any of the policies and certificates required, the Employer may affect the insurance which the Contractor should have provide and recover the premiums the Employer has paid from payments otherwise due to the Contractor or, if no payment is due, the payment of the premiums shall be a debt due.

12.4 Alterations to the terms of insurance shall not be made without the approval of the Engineer.

12.5 Both parties shall comply with any conditions of the insurance policies.

### 13 Site Investigation Reports

13.1 The Contractor, in preparing the Bid, may rely on any site Investigation Reports referred to in the Contract Data if available, supplemented by any information available to the Bidder.

### 14 Queries about the Contract Data

14.1 The Engineer will clarify queries on the Contract Data.

### 15 Contractor to Construct the Works

15.1 The Contractor shall construct and install the Works in accordance with the Specification and Drawings.

### 16 The Works to be completed by the Intended Completion Date

16.1 The Contractor may commence execution of the Works on the Start Date and shall carry out the Works in accordance with the programme submitted by the Contractor, as updated with the approval of the Engineer, and complete them by the Intended Completion Date.

### 17 Approval by the Engineer

17.1 The Contractor shall submit Detailed Design calculations & Good for Construction Drawings and as built drawings for all components of the Work to the Engineer, who is to approve them if they comply with the Specifications and Drawings.

17.2 The Contractor shall obtain approval of Designs & drawings from any third parties if required before execution of the works.

17.3 All Drawings prepared by the Contractor for the execution of the temporary or permanent Works, are subject to prior approval by the Engineer before their use.

### 18 Safety

18.1 The Contractor shall be responsible for the safety of all activities on the site.

### 19 Discoveries

19.1 Anything of historical or other interest or of significant value unexpectedly discovered on the Site is the property of the Employer. The Contractor is to notify the Engineer of such discoveries and carry out the Engineer's instructions for dealing with them.

## 20 Possession of the Site

20.1 The Employer shall give possession of all parts of the Site to the Contractor. If the possession of a part is not given by the date stated in the Contract Data the Employer is deemed to have delayed the start of the relevant activities and this will be Compensation Event.

## 21 Access to the Site

21.1 The Contractor shall allow the Engineer and any person authorized by the Engineer access to the Site, to any place where work in connection with the Contract is being carried out or is intended to be carried out and to any place where materials or plant are being manufactured/fabricated/assembled for the works.

## 22 Instructions

22.1 The Contractor shall carry out all instructions of the Engineer pertaining to works, which comply with the applicable laws where the Site is located.

22.2 The Contractor shall permit the Employer to inspect the Contractor's accounts and records relating to the performance of the Contractor and to have them audited by auditors appointed by the Employer, if so required by the Employer.

## 23 Settlement of Disputes

### 23.1 Amicable Resolution

- a) Save where expressly stated contrary to this terms and conditions and the RFP, any dispute, difference or controversy of whatever nature between the parties, howsoever arising under, out of or in relation to this Agreement (the "Dispute") shall in the first instance be attempted to be resolved amicably in accordance with the procedure set forth below.
- b) Either Party may require such Dispute to be referred to the Chairperson, GSCL, and the Chief Executive Officer/Partner of the Contractor for the time being, for amicable settlement. In respect of disputes of a technical nature the Parties may engage an Expert.

Upon such reference, the two shall meet at the earliest mutual convenience and in any event within 15 days of such reference to discuss and attempt to amicably resolve the Dispute. If the Dispute is not amicably settled within 15 (fifteen) days of such meeting between the two, either Party may refer the Dispute to arbitration in accordance with the provisions of Article below.

### 23.2 Arbitration

In case, a dispute is referred to arbitration, the arbitration shall be under the Arbitration and Conciliation Act 1996 and any statutory modification or re-enactment thereof.

If during the subsistence of this Contract or thereafter, any dispute between the Parties hereto arising out of or in connection with the validity, interpretation, implementation, material breach or

any alleged material breach of any provision of this Contract or regarding any question, including as to whether the termination of this Contract by one Party hereto has been legitimate, the Parties hereto shall endeavor to settle such dispute amicably and/or by Conciliation to be governed by the Arbitration and Conciliation Act, 1996 and any statutory modification or re-enactment thereof or as may be agreed to between the Parties. The attempt to bring about an amicable settlement is considered to have failed as soon as one of the Parties hereto, after reasonable attempts; which attempt shall continue for not less than thirty (30) days, gives thirty (30) day notice to refer the dispute to arbitration to the other Party in writing.

The Arbitration proceedings shall be governed by the Arbitration and Conciliation Act (Amendment Act), 1996 and any statutory modification or re-enactment thereof The Arbitration proceedings shall be held in Guwahati in Assam State, India.

The Arbitration proceeding shall be governed by the substantive laws of India. The proceedings of Arbitration shall be in Hindi/English language. Except as otherwise provided elsewhere in the contract if any dispute, difference, question or disagreement arises between the parties hereto or their respective representatives or assignees, at any time in connection with construction, meaning, operation, effect, interpretation or out of the contract or breach thereof the same shall be referred to a Tribunal of three (3) Arbitrators, constituted as per the terms of and under the (Indian) Arbitration and Conciliation Act,. Each party to the contract shall appoint/ nominate one Arbitrator each, the two Arbitrators so appointed/ nominated by the Parties herein shall together choose the third Arbitrator, who shall be the Presiding Arbitrator of the Tribunal. The consortium of the three Arbitrators shall form the Arbitral Tribunal.

In case, a party fails to appoint an arbitrator within 30 days from the receipt of the request to do so by the other party or the two Arbitrators so appointed fail to agree on the appointment of third Arbitrator within 30 days from the date of their appointment upon request of a party, the Chief Justice of the Guwahati High Court or any person or institution designated by him shall appoint the Arbitrator/Presiding Arbitrator upon request of one of the parties.

Any letter, notice or other communications dispatched to contractor relating to either arbitration proceeding or otherwise whether through the post or through a representative on the address last notified to the Authority by Contractor shall be deemed to have been received by Contractor although returned with the remarks, refused 'undelivered' where about not known or words to that effect or for any other reasons whatsoever

If the Arbitrator so appointed dies, resigns, incapacitated or withdraws for any reason from the proceedings, it shall be lawful for the Authority to appoint another person in his place in the same manner as aforesaid. Such person shall proceed with the reference from the stage where his predecessor had left if both parties consent for the same; otherwise, he shall proceed de novo.

It is a term of the contract that the party invoking arbitration shall specify all disputes to be referred to arbitration at the time of invocation of arbitration and not thereafter.

It is also a term of the contract that neither party to the contract shall be entitled for any interest on the amount of the award. The Arbitrator shall give reasoned award and the same shall be final, conclusive and binding on the parties.

The fees of the arbitrator, costs and other expenses incidental to the arbitration proceedings shall be borne equally by the parties.

## B. DESIGN, DRAWINGS AND DOCUMENTS

### 24 General Design Obligations

24.1 The Contractor shall establish a design liaison office at Guwahati within 08 days from the Commencement Date to facilitate preparation and submission of designs, drawings, Construction documents, etc., for review and approval by the Employer's Representative. The design liaison office shall preferably be located near the Employer's office to facilitate communications and frequent interactions with the Employer's Representative and the Employer. The Contractor shall provide full-time design staff and continuously maintain the design liaison office. The Contractor will be fully responsible for ensuring that its designs, drawings, and construction documents satisfy all requirements for constructing Works that are complete and fully functional in all respects. The Contractor shall carry out, and be responsible for, the design of the Works, Site surveys, subsoil investigations, materials testing, and all other things necessary for proper planning and design. Design shall be prepared by qualified designers who are engineers or other professionals who comply with the criteria (if any) stated in the Employer's Requirements. The Contractor shall submit to the Employer's Representative for consent the name and particulars of each proposed designer and design Subcontractor.

24.2 The Contractor warrants that he, his designers and design Subcontractors have the experience and capability necessary for the design. The Contractor undertakes that the designers shall be available to attend discussions with the Employer's Representative at all reasonable times.

### 25 Contractors Documents

25.1 The Contractor's Documents shall comprise the technical documents specified in the Employer's Requirements, documents required to satisfy all regulatory approvals, and the documents described in Sub-Clause 28 [As-Built Documents]. Unless otherwise stated in the Employer's Requirements, the Contractor's Documents shall be written in the language for communications defined in Sub-Clause 3 [Language and Law].

25.2 If the Employer's Requirements describe the Contractor's Documents which are to be submitted to the Employer's Representative for review leading to consent and/or for approval, they shall be submitted accordingly, together with a Notice as described below. The Employer's Representative gives his consent to a document when he is satisfied that the Contractor's Documents conform to the Employer's Requirements. In the following provisions of this Sub-

Clause, (i) "review period" means the period required by the Employer's Representative for

review leading to consent and (if so specified) for approval, and (ii) "Contractor's Documents" exclude any documents which are not specified as being required to be submitted for review leading to consent and/or for approval. The Contractor's Documents which require approval from the Employer's Representative shall be as listed in the Contract Data.

- 25.3 Unless otherwise stated in the Employer's Requirements or agreed with the Employer's Representative, each review period shall not exceed 21 days, calculated from the date on which the Employer's Representative receives a Contractor's Document and the Contractor's Notice. This Notice shall state that the Contractor's Document is considered ready for review leading to either approval (if so specified) or consent with regard to conformity with the Employer's Requirements, in accordance with this Sub-Clause and for use. The Notice shall also state that the Contractor's Document complies with the Contract, or the extent to which it does not comply.
- 25.4 The Employer's Representative may, within the review period, give Notice to the Contractor that a Contractor's Document fails (to the extent stated) to conform with the Contract. If a Contractor's Document so fails to conform, it shall be rectified, resubmitted and reviewed (and, if specified, approved) in accordance with this Sub-Clause, at the Contractor's cost.
- 25.5 For each part of the Works, and except to the extent that the prior approval or consent of the Employer's Representative shall have been obtained:
- a) in the case of a Contractor's Document which has (as specified) been submitted for the Employer's Representative's approval or consent:
    - i. the Employer's Representative shall give Notice to the Contractor that the Employer's Representative gives his consent that the Contractor's Document conforms with the Employer's Requirements or is approved, or that it does not (to the extent stated) comply with the Contract;
    - ii. execution of such part of the Works shall not commence until the Employer's Representative has either approved or given his consent to the Contractor's Document; and
    - iii. the Employer's Representative shall be deemed to have approved the Contractor's Documents or given his consent that the Contractor's Documents conform to the Employer's Requirements upon the expiry of the review periods for all the Contractor's Documents which are relevant to the design and execution of such part, unless the Employer's Representative has previously notified otherwise in accordance with subparagraph (i);
  - b) execution of such part of the Works shall not commence prior to the expiry of the review periods for all the Contractor's Documents which are relevant to its design and execution;

c) execution of such part of the Works shall be in accordance with those Contractor's Documents for which the Employer's Representative has given his consent as to the conformity with the Employer's Requirements, (and, if specified, approved); and

d) if the Contractor wishes to modify any design or document which has previously been submitted for review (and, if specified, approval), the Contractor shall immediately give Notice to the Employer's Representative, accompanied by a written explanation of the need for such modification. Thereafter, the Contractor shall submit revised documents to the Employer's Representative in accordance with the above procedure.

25.6 Any such consent and/or approval (where specified) (under this Sub-Clause or otherwise) shall not relieve the Contractor from any obligation or responsibility.

## 26 Contractor's Undertaking

26.1 If the Employer's Representative reasonably instructs that further Contractor's Documents are required, the Contractor shall prepare them promptly at his own cost. The Contractor undertakes that the design, the Contractor's Documents, the execution and the completed Works will be in accordance with:

- a) the Laws of the Country; and
- b) the documents forming the Contract, as altered or modified by Variations.

## 27 Technical Standards and Regulations

27.1 Unless otherwise stated, the design, the Contractor's Documents, the execution and the completed Works shall comply with the Country's technical standards, building, construction and environmental Laws, and other standards specified in the Employer's Requirements, applicable to the Works, or defined by the applicable Laws.

27.2 All these Laws shall, in respect of the Works and each Section, be those prevailing when the Completion Certificate is issued in accordance with Sub-Clause 57.1 [Completion]. References in the Contract to published standards shall be understood to be references to the edition applicable on the Base Date, unless stated otherwise.

27.3 If changed or new applicable standards come into force in the Country after the Base Date, the Contractor shall give Notice to the Employer's Representative and (if appropriate) submit proposals for compliance. In the event that:

- a) the Employer's Representative determines that compliance is required; and
- b) the proposals for compliance constitute a variation, then the Employer's Representative shall initiate a Variation in accordance with Clause 44 [Variations].

## 28 As-built Documents

- 28.1 The Contractor shall prepare, and keep up-to-date, a complete set of "as-built" records of the execution of the Works, showing the exact as-built locations, sizes and details of the work as executed. These records shall be kept on the Site and shall be used exclusively for the purposes of this Sub-Clause. At least two copies shall be supplied to the Employer's Representative prior to the commencement of the Tests on Completion of Design-Build.
- 28.2 In addition, the Contractor shall supply to the Employer's Representative as-built drawings of the Works, showing all Works as executed, and submit them to the Employer's Representative for review under Sub-Clause 25 [Contractor's Documents]. The Contractor shall obtain the consent of the Employer's Representative as to their size, the referencing system, and other relevant details.
- 28.3 Prior to the issue of the Completion Certificate, the Contractor shall supply to the Employer's Representative the specified numbers and types of copies of the relevant as-built drawings, in accordance with the Employer's Requirements. The relevant work shall not be considered to be completed for the purposes of issuing the Completion Certificate until the Employer's Representative has received these documents.

## 29 Design Error

- 29.1 If errors, omissions, ambiguities, inconsistencies, inadequacies or other defects are found in the Contractor's Documents, they and the Works shall be corrected at the Contractor's cost, notwithstanding any consent or approval under this Clause.

## 30 Supply of Drawings and Documents

The Contractor shall supply to the Engineer four copies of all Drawings, Specifications and other documents submitted by the Contractor and approved by the Engineer in accordance with Sub-Clauses 30 to 32, together with a reproducible copy of any material which cannot be reproduced to an equal standard by photocopying. In addition the Contractor shall supply such further copies of such Drawings, Specifications and other documents as the Engineer may request in writing for the use of the Employer, who shall pay the cost thereof.

## 31 Copy of Drawings to be kept at Site

Two copies of Drawings, provided to or supplied by the Contractor as aforesaid, shall be kept by the Contractor on the Site and the same shall at all reasonable times be available for inspection and use by the Engineer and by any other person authorized by the Engineer in writing.

### 32 Disruption of Progress

The Contractor shall give notice to the Engineer, with a copy to the Employer, whenever planning or execution of the Works is likely to be delayed or disrupted unless any further drawing or instruction is issued by the Engineer within a reasonable time. The notice shall include details of the drawing or instruction required and why and by when it is required and of any delay or disruption likely to be suffered if it is late.

### C. TIME CONTROL

### 33 Programme

- 33.1 Within the time stated in the Contract Data the Contractor shall submit to the Engineer for approval of a Programme showing the general methods, arrangements, order, and timing for all the activities in the works along with monthly cash flow forecast.
- 33.2 An update of the Programme shall be a programme showing the actual progress achieved on each activity and the effect of the progress achieved on the timing of the remaining work including any changes to the sequence of the activities.
- 33.3 The Contractor shall submit to the Engineer, for approval, an updated Programme at intervals no longer than the period stated in the Contract Data. If the Contractor does not submit an updated Programme within this period, the Engineer may withhold the amount stated in the Contract Data from the next payment certificate and continue to withhold this amount until the next payment after the date on which the overdue Programme has been submitted.
- 33.4 The Engineer's approval of the Programme shall not alter the Contractor's obligations. The Contractor may revise the Programme and submit it to the Engineer again at any time. A revised programme is to show the effect of variations and compensation events.

### 34 Extension of the Intended Completion Date

- 34.1 The Engineer shall extend the Intended Completion Date if a Compensation Event occurs or a Variation is issued which makes it impossible for completion to be achieved by the Intended Completion Date without the Contractor taking steps to accelerate the remaining work and which would cause the Contractor to incur additional cost.
- 34.2 The Engineer shall decide whether and by how much to extend the Intended Completion Date within 35 days of the Contractor asking the Engineer for a decision upon the effect of a Compensation Event or variation and submitting full supporting information. If the Contractor has failed to give early warning of a delay or has failed to cooperate in dealing with a delay, the delay by this failure shall not be considered in assessing the new Intended Completion Date.

34.3 The Engineer shall within 14 days of receiving full justification from the contractor for extension of Intended Completion Date refer to the Employer his decision. The Employer shall in not more than 21 days communicate to the Engineer the acceptance or otherwise of the Engineer's decision. If the Employer fails to give his acceptance, the Engineer shall not grant the extension and the contractor may refer the matter to the Concerned Authority as mentioned under Clause 23 [Settlement of Disputes].

### 35 Delays ordered by the Engineer

35.1 The Engineer may instruct the Contractor to delay or progress of any activity within the Works.

### 36 Management Meeting

- 36.1 Either the Engineer or the Contractor may require the other to attend a management meeting. The business of a management meeting shall be to review the plans for remaining work and to deal with matters raised in accordance with the early warning procedure.
- 36.2 The Engineer shall record the business of management meetings and is to provide copies of his record to those attending the meeting and to the Employer. The responsibility of the parties for actions to be taken is to be decided by the Engineer either at the Management meeting or after the management meeting and stated in writing to all who attended the meeting.

### 37 Early Warning

- 37.1 The Contractor is to warn the Engineer at the earliest opportunity of specific likely future events or circumstances that may adversely affect the quality of the work increase the Contract Price or delay the execution of works. The Engineer may require the Contractor to provide an estimate of the expected effect of the future event or circumstance on the Contract Price and Completion Date. The estimate is to be provided by the Contractor as soon as reasonably possible.
- 37.2 The Contractor shall cooperate with the Engineer in making and considering proposals for how the effect of such an event or circumstance can be avoided or reduced by anyone involved in the work and in carrying out any resulting instruction of the Engineer.

## D. QUALITY CONTROL

### 38 Identifying Defects

38.1 The Engineer shall check the Contractor's work and notify the Contractor of any defects that are found. Such checking shall not affect the Contractor's responsibilities. The Engineer may

instruct the Contractor to search for a Defect to uncover and test any work that the Engineer considers may have a Defect.

### 39 Tests

39.1 If the Engineer instructs the Contractor to carry out a test not specified in the Specification to check whether any work has a Defect and the test shows that it does, the Contractor shall pay for the test and any samples. If there is no Defect the test shall be a Compensation Event.

### 40 Correction of Defects

40.1 The Engineer shall give notice to the Contractor of any Defects before the end of the Defects Liability Period, which begins at Completion and is defined in the Contract Data. The Defects Liability Period shall be extended for as long as Defects remain to be corrected.

40.2 Every time notice of a Defect is given, the Contractor shall correct the notified Defect within the length of time specified by the Engineer's notice.

### 41 Uncorrected Defects

41.1 If the Contractor has not corrected a Defect within the time specified in the Engineer's notice, the Engineer will assess the cost of having the Defect corrected, and the Contractor will pay this amount.

## E. COST CONTROL

### 42 Bill of Quantities

42.1 The Bill of Quantities shall contain items for the construction, installations, testing, and commissioning work to be done by the Contractor.

42.2 The Bill of Quantities is used to calculate the Contract Price. The Contractor is paid for the quantity of the work done at the rate in the Bill of Quantities for each item.

### 43 Changes in the Quantities

43.1 Any quantities which may be set out in the Price Schedule, tender Drawings, are only estimated quantities and are not to be taken as the actual and correct quantities of the Works to be executed by the Contractor in fulfillment of his obligations under the Contract. The Contractor is responsible to assess the exact requirements and quantities for all items for the purpose of quoting his rates, and no variation in rates will be allowed on account of any variation in the estimated quantities. Additional Quantities of Works shall be carried out at the quoted rate for the respective item only.

43.2 If the Employer does not procure any subject matter of procurement or procures less than the quantity specified in the bidding documents due to change in circumstances, the bidder shall not be entitled for any claim or compensation except otherwise provided in the bidding document.

#### 44 Variations

44.1 All Variations shall be included in updated Programmes produced by the Contractor.

44.2 Variations may be initiated by the Employer's Representative at any time prior to issuing the Commissioning Certificate, either by an instruction to the Contractor by the Employer's Representative or by a request for the Contractor to submit a proposal. A Variation shall not comprise the omission of any work which is to be carried out by others.

44.3 The Contractor shall execute and be bound by each Variation; unless the Contractor promptly gives Notice to the Employer's Representative stating (with supporting particulars) that (i) the Contractor cannot readily obtain the Goods required for the Variation, (ii) it will reduce the safety or suitability of the Works for the purposes for which they were intended under the Contract; (iii) it will have an adverse impact on the achievement of the Schedule of guarantees; or (iv) it will have an adverse effect on the provision of the Operation Service under the Contract. Upon receiving this Notice, the Employer's Representative shall cancel, confirm or vary the instruction and the Contractor shall execute and be bound by it.

44.4 If the Employer or the Employer's Representative wishes to instruct a Variation during the Operation Service Period, he shall give the Contractor written details of his requirements. The Contractor shall then proceed in accordance with Clause.

#### 44.5 Value Engineering

44.5.1 The Contractor may, at any time, submit to the Employer's Representative a written proposal, which (in the Contractor's opinion) will, if adopted:

- a) accelerate completion of the Works;
- b) reduce the cost to the Employer of executing, maintaining or operating the Works;
- c) improve the efficiency or value to the Employer of the completed Works;
- d) improve the efficiency of the Operation Service being provided; or e) otherwise be of benefit to the Employer.

44.5.2 The proposal shall be prepared at the cost of the Contractor and shall include the items listed in Sub-Clause 44.6 [Variation Procedure].

#### 44.6 Variation Procedure

44.6.1 If the Employer's Representative requests a proposal, prior to instructing a Variation, the Contractor shall respond in writing as soon as practicable, either by giving reasons why he cannot comply (if this is the case) or by submitting:

- a) a description of the proposed design and/or work to be performed and a programme for its execution;
- b) the Contractor's proposal for any necessary modifications to the programme according to Sub-Clause 33 [Programme] and to the Time for Completion; and
- c) the Contractor's proposal for adjustment to the Contract Price.

44.6.2 The Employer's Representative shall, as soon as practicable after receiving such proposal (under Sub-Clause 44.5 [Value Engineering] or otherwise), respond with approval, disapproval or comments. The Contractor shall not delay any work whilst awaiting a response.

Rates for items under change of scope and extra item shall be finalized as per the schedule of rates (SOR) as approved by GSCL and for non SOR items the rates will be based on rate analysis approved by GSCL. GSCL may ask the BIDDER to submit rate analysis with market rates with supporting quotations from suppliers etc.

44.6.3 Each instruction to execute a Variation, with any requirements for the recording of costs, shall be issued by the Employer's Representative to the Contractor, who shall acknowledge receipt.

44.6.4 Upon instructing or approving a Variation, the Employer's Representative shall proceed to agree/disagree or determine adjustments to the Contract Price and the Schedule of Payments. These adjustments, shall include reasonable profit, and shall take account of the Contractor's submissions under Sub-Clause 44.5 [Value Engineering] if applicable.

## 45 Payments of Variations

45.1 The Contractor shall provide the Engineer with a quotation (with breakdown of unit rates) for carrying out the Variation when requested to do so by the Engineer. The Engineer shall assess the quotation, which shall be given with seven days or the request of within any longer period stated by the Engineer and before the Variations is ordered.

45.2 If the work in the Variations corresponds with an item description in the Bill of Quantities, the quoted rate in the Bill of Quantities shall be used to calculate the value of the Variation. If the Variation does not correspond with items in the Bill of Quantities, the quotation by the Contractor shall be in the form of new rates for the relevant items of work and only be allowed for execution after approval of Employer.

45.3 If the Contractor's quotation is unreasonable, the Engineer may order the Variations and make a change to the Contract Price which shall be based on Engineer's own forecast of the effects of the Variation on the Contract's costs.

45.4 If the Engineer decides that the urgency of varying the work would prevent a quotation being given and considered without delaying the work, no quotation shall be given and the Variation shall be treated as a Compensation Event.

45.5 The Contractor shall not be entitled to additional payment for costs, which could have been avoided by giving early warning.

#### 46 Cash Flow Forecasts

46.1 When the Programme is updated, the contractor is to provide the Engineer with an updated cash flow forecast.

#### 47 Payment Certificates

47.1 The contractor shall submit to the Engineer monthly statements of the estimated value of the work completed less the cumulative amount certified previously.

47.2 The Engineer shall check the Contractor's monthly statement within 14 days and certify the amount to be paid to the Contractor.

47.3 The value of work executed shall be determined by the Engineer.

47.4 The value of work executed shall comprise the value of the quantities of the items in the Bill of Quantities Completed.

47.5 The value of work executed shall include the valuation of Variations and Compensation Events.

47.6 The Engineer may exclude any item certified in a previous certificate or reduce the proportion of any item previously certified in any certificate in the light of later information.

#### 48 Payments

48.1 Payments shall be adjusted for deductions for advance payments, retention, other recoveries in terms of the contract and taxes at source, as applicable under the law. The Employer shall pay the Contractor the amounts certified by the Engineer as and when fund is available.

48.2 Items of the Works for which no rate or price has been entered in will not be paid for by the Employer and shall be deemed covered by other rates and prices in the Contract.

## 49 Compensation Events

49.1 The following Compensation Events unless those are caused by the Contractor:

- a) The Employer does not give access to a part of the Site by the Site Possession Date stated in the Contract Data.
- b) The Employer modifies the schedule of other contractors in a way which affects the work of the Contractor under the Contract.
- c) The Engineer orders a delay or does not issue drawings, specifications or instructions required for execution of works on time.
- d) The Engineer instructs the Contractor to uncover or to carry out additional tests upon work which is then found to have no Defects.
- e) The Engineer does not approve of a subcontract to be let, within 15 days.
- f) Ground conditions are substantially more adverse than could reasonably have been assumed before issuance of Letter of Acceptance from the information issued to Bidders (including the Site Investigation Reports), from information available publicly and from a visual inspection of the site.
- g) The Engineer gives an instruction for dealing with an unforeseen condition, caused by the Employer, or additional work required for safety or other reasons.
- h) Other contractors, public authorities, utilities or the Employer does not work within the dates and other constraints stated in the Contract, and they cause delay or extra cost to the Contractor.
- i) The Engineer unreasonably delays issuing a Certificate of Completion.
- j) Other compensation Events listed in the Contract Data or mentioned in the Contract.

49.2 If a compensation event would cause additional cost or would prevent the work being completed before the Intended Completion Date, the Contract Price shall be increased and/or the Intended Completion Date is extended. The Engineer shall decide whether and by how much the Contract Price shall be increased and whether and by how much the Intended Completion Date shall be extended.

49.3 As soon as information demonstrating the effect of each Compensation Event upon the Contractor's forecast cost has been provided by the Contractor, it is to be assessed by the Engineer and the Contract Price shall be adjusted accordingly. If the Contractor's forecast is deemed unreasonable, the Engineer shall adjust the Contract Price based on Engineer's own forecast. The Engineer will assume that the Contractor will react competently and promptly to the event.

49.4 The Contractor shall not be entitled to compensation to the extent that the Employer's interests are adversely affected by the Contractor not having given early warning or not having cooperated with the Engineer.

## 50 Tax

50.1 The rates quoted by the Contractor shall be deemed to be inclusive of the sales and other taxes that the Contractor will have to pay for the performance of this Contract. The

Employer will perform such duties in regard to the deduction of such taxes at source as per applicable law.

## 51 Currencies

51.1 All payments shall be made in Indian Rupees.

## 52 Price Adjustment Escalation:

The rate quoted shall be final and remain applicable during the entire period of work upto the completion extended period and no escalation in rates will be permitted due to increase in prices of materials, labour wages, railway freight or due to any reason whatsoever.

## 53 Retention

53.1 The employer shall retain from each payment due to the Contractor the proportion stated in the Contract Data until Completion of the whole of the Works.

53.2 On completion of the whole of the works half the total amount retained is repaid to the Contractor and half when the Defects Liability Period has passed and the Engineer has certified that all Defects notified by the Engineer to the Contractor before the end of this period have been corrected.

53.3 On completion of the whole works, the contractor may substitute retention money with an "on demand" Bank Guarantee.

## 54 Liquidated Damages

54.1 The Contractor shall pay liquidated damages to the Employer at the rate per day stated in Contract Data (for the whole of the works or the milestone as stated in the contract data). The total amount of liquidated damages shall not exceed the amount defined in the Contract Data. The Employer may deduct liquidated damages from payments due to the Contractor. Payment of liquidated damages does not affect the Contractor's liabilities.

\* For each day that the completion dates is later than the intended completion date.

54.2 If the Intended Completion Date is extended after liquidated damages have been paid, the Engineer shall correct any overpayment of liquidated damages by the contractor by adjusting the next payment certificate. The Contractor shall be paid interest on the over payment calculated from the date of payment of repayment at the rate specified in Sub-Clause 48.1. [Payments]

54.3 If the contractor fails to comply with the time for completion as stipulated in the tender, then the contractor shall pay to the employer the relevant sum stated in the Contract Data as Liquidated damages for such default and not as penalty for every date or part of day which shall elapse between relevant time for completion and the date stated in the taking over

certificate of the whole of the works on the relevant section, subject to the limit stated in the Contract Data.

The Employer may, without prejudice to any other method of recovery deduct the amount of such damages from any monies due or to become due to the contractor. The payment of deduction of such damages shall not relieve the contractor from his obligation to complete the work on from any other of his obligations and liabilities under the contract.

54.4 If, before the Time for completion of the whole of the works or, if applicable, any Section, a Taking-Over Certificate has been issued for any part of the Works or of a Section, the liquidated damages for delay in completion of the remainder of the works or of that Section shall, for any period of delay after date stated in such Taking-Over Certificate, and in the absence of alternative provisions in the Contract, be reduced in the proportion which the value of the part so certified bears to the value of the whole of the Works or Section, as applicable. The provisions of this Sub-Clause shall only apply to the rate of liquidated damages and shall not affect the limit thereof.

## 55 Securities

55.1 The performance security (including additional security for unbalanced bids) shall be provided to the Employer no later than the date specified in the letter of acceptance. The performance security shall be in the form of an unconditional bank guarantee issued by any Nationalized/ Scheduled Bank located in India, for 2%(Two ) of the Contract Price and in the form provided in Vol-I. The cost of complying with the requirements of this Clause shall be borne by the Contractor. When providing such security to the Employer, the Contractor shall notify the Engineer of so doing. The performance security shall be valid until a date 45 days from the date of expiry of 3 years of O&M services

### 55.2 Claims under Performance Security

Prior to making a claim for encashment of Bank Guarantee provided by the Contractor as the Performance Security the Employer will, notify the Contractor stating the nature of the default in respect of which the claim is to be made. Encashment of the bank guarantee shall not be questioned or contested either by the Contractor or by the issuing Institution (Bank) on the ground of dispute if any.

## 56 Cost of Repair

56.1 Loss or damaged to the works or materials to be incorporated in the works between the start date and the end of the defects correction period shall be remedied by the contractor at the contractor's cost if the loss or damages arises from the Contractor's acts or omissions.

## F. FINISHING THE CONTRACT

### 57 Completion

57.1 The Contractor shall request the Engineer to issue a certificate of completion of the works and the Engineer will do so upon deciding that the work is completed.

### 58 Taking Over

58.1 The Employer shall take over the site and the works within 7 days of the Engineer issuing a certificate of completion.

### 59 Final Account

59.1 The Contractor shall supply to the Engineer a detailed account of the total amount that the Contractor considers payable under the contract before the end of the defects liability period. The Engineer shall issue a defect liability certificate and certify any final payment that is due to the contractor within 56 days of receiving the contractor's account if it is correct and complete. If it is not, the Engineer shall issue within 56 days a schedule that states the scope of the correction or additions that are necessary. If the final account is still unsatisfactory after it has been resubmitted, the Engineer shall on the account payable to the Contractor and issue a payment certificate, within 56 days of receiving the contractor's revised account.

### 60 Operating and Maintenance Manuals

60.1 If "as built" drawings and/or operating and maintenance manuals are required, the contractor shall supply them by the dates stated in the contract data.

60.2 If the contractor does not supply the drawings and/or manuals by the dates stated in the contract data or they do not received Engineer's approval, the Engineer shall with hold the amount stated in the contract data from payments due to the contractor.

### 61 Termination

61.1 The Employer or the Contractor may terminate the Contract if the other party causes a fundamental breach of the contract.

61.2 Fundamental breaches of contract include, but shall not be limited to the following:

- a) The Contractor stops work for 28 days when no stoppage of work is shown on the current programme and the stoppage has not been authorized by the Engineer;
- b) The Engineer instructs the Contractor to delay the progress of the works and the instruction is not withdrawn within 28 days.
- c) The employer or the contractor is made bankrupt or goes into liquidation other than for a reconstruction or amalgamation;

- d) A payment certified by the Engineer is not paid by the Employer to the Contractor within 56 days of the date of the Engineer's certificate;
- e) The Engineer gives notice that failure to correct a particular Defect is a fundamental breach of Contract and the Contractor fails to correct it within a reasonable period of time determined by the Engineer;
- f) The Contractor does not maintain a security which is required;
- g) The Contractor has delayed the completion of works by the number of days for which the maximum amount of liquidated damages can be paid as defined in the Contract Data; and
- h) If the Contractor, in the judgment of the Employer has engaged in corrupt or fraudulent practices in competing for or in executing the Contract.

For the purpose of this paragraph: "corrupt practice" means the offering, giving, receiving or soliciting of anything of value to influence the action of a public official in the procurement process or in contract execution. "Fraudulent practice" means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of the Borrower, and includes collusive practice among Bidders (prior to or after bid submission) designed to establish bid prices at artificial non-competitive levels and to deprive the Borrower of the benefits of free and open competition".

- 61.3 When either party to the Contract gives notice of a breach of contract to the Engineer for a cause other than those listed under Sub-Clause 61.2 above, the Engineer shall decide whether the breach is fundamental or not.
- 61.4 Notwithstanding the above, the Employer may terminate the Contract for convenience.
- 61.5 If the Contract is terminated the contractor shall stop work immediately, make the site safe and secure and leave the site as soon as reasonably possible.

## 62 Payment upon Termination

- 62.1 If the contract is terminated because of a fundamental breach of Contract by the contractor, the Engineer shall issue a certificate for the value of the work done less advance payments received up to the date of issue of the certificate, less other recoveries due in terms of the contract, less taxes due to be deducted at source as per applicable law and less the percentage to apply to the work not completed as indicated in the Contract data. Additional Liquidation Damages shall not apply. If the total amount due to the Employer exceeds any payment due to the Contractor the difference shall be a debt payable to the Employer.
- 62.2 If the contract is terminated at the Employer's convenience or because of a fundamental breach of Contract by the Employer, the Engineer shall issue a certificate for the value of the work done, the cost of balance material brought by the contractor and available at site, the reasonable cost of removal of equipment, repatriation of the contractor's personnel employed solely on the works, and the Contractor's costs of protecting and securing the works and less

advance payments received up to the date of the certificate, less other recoveries due in terms of the contract and less taxes due to be deducted at source as per applicable law.

### 63 Property

63.1 All materials on the Site, Plant, Equipment, Temporary works and works are deemed to be the property of the Employer, if the Contract is terminated because of a Contractor's default.

### 64 Releases from Performance

64.1 If the contract is frustrated by the outbreak of war or by any other event entirely outside the control of either the Employer or the Contractor the Engineer shall certify that the Contract has been frustrated. The Contractor shall make the site safe and stop work as quickly as possible after receiving this certificate and shall be paid for all work carried out before receiving it and for any work carried out afterwards to which commitment was made.

### 65 Maintenance (O&M) Services

#### 65.1 General

65.1.1 Contractor shall carry out Maintenance of Facilities as per the detailed provisions specified in the Technical Specification for the period as specified in Contract.

65.1.2 Contractor shall deploy Maintenance personnel during the Defect Liability period as per the Contract. These O&M personnel shall be multidiscipline to cover all aspects of the work covered under the Scope as per the detailed provision in the technical specification.

65.1.3 All inputs required for proper and efficient maintenance of the Facilities in strict adherence with the Technical Specification such as O&M personnel, Contractor's equipment required for all types of maintenances, temporary works, all lubricants, servo fluids and Chemicals, Consumables, spare etc., shall be provided by the Contractor, may issue required spares from the spares supplied by the Contractor as mandatory and recommended spares on replenishment basis. Such spares shall be replenished at no cost to the Owner. Prior to Employer Acceptance, Contractor shall ensure that all the spares issued by Employer have been completely replenished.

65.1.4 Contractor shall be responsible for training and familiarization of O&M personnel during this period as per Contract. The general topics of the training will encompass all information necessary for efficient and proper Maintenance of the Facilities. Contractor shall submit a detailed training procedure and schedule to the Employer for approval. This will be provided within contract price.

65.1.5 During the Operation and Maintenance Period, the Contractor shall operate and maintain the Project in accordance with the Contract and if required, modify, repair or otherwise make improvements to the Project to comply with the provisions of the Contract and Applicable

Laws and conform to the Technical Specifications, the Maintenance Manual and Good Industry Practice. The obligations of the Contractor shall include:

- a) Operations of all the equipments installed and commissioned by the Contractor
- b) Ensuring smooth running operations of all the equipments installed and commissioned by the Contractor
- c) permitting and providing a safe, smooth and uninterrupted use of the Project;
- d) undertaking routine maintenance of the Project including prompt repairs as may be required;
- e) preventing, with the assistance of concerned law enforcement agencies, any unauthorized use of the Project;
- f) preventing, with the assistance of the concerned law enforcement agencies, any encroachments on the Project;
- g) quarterly preventive check-up and maintenance

65.1.6 The Contractor shall remove promptly from the Project all surplus construction machinery and materials, waste materials (including Hazardous Materials and waste water), rubbish and other debris and keep the Project in a clean, tidy and orderly condition, and in conformity with the Applicable Laws and Good Industry Practice.

#### 65.2 Maintenance Requirements

The Contractor shall procure at all times during the Operation and Maintenance Period that the Project conforms to the operation and maintenance requirements set forth in Vol-II. The Contractor agrees and acknowledges that it shall not sub-contract full or any part of its Maintenance Services obligations including technical support and know how during the Term of the Contract, unless otherwise expressly mentioned in the Contract.

#### 65.3 Maintenance Manual

No later than 180 (one hundred and eighty) days prior to Completion Date, the Contractor shall, in consultation with the Authority and PMC, evolve an operation, upkeep, repair and maintenance manual (the "Maintenance Manual") for the regular and preventive maintenance of the Project in conformity with Technical Specifications, maintenance requirements, safety requirements and Good Industry Practice, and shall provide 5 (five) copies, thereof to the Authority and 2 (two) copies to PMC. Similarly, on completion of the 3 year maintenance period the Contractor should resubmit an updated maintenance Manual to the Authority.

#### 65.4 Restoration of loss or damage to Project

Save and except as otherwise expressly provided in the Contract, in the event that the Project or any part thereof suffers any loss or damage during the Term from any cause whatsoever, the Contractor shall, at its cost and expense, rectify and remedy such loss or damage forthwith so that the Project conforms to the provisions of the Contract.

#### 65.5 Operation and Maintenance Services fee during the Maintenance Period

Contractor has to note all the requirement & responsibilities mentioned in volume –II under the scope of the Contractor during the 3 years maintenance period & quote his yearly price accordingly in the Price Bid. The Contractors quoted price shall be inclusive of all & no extra payment shall be made over and above the quoted price while performing his duty to meet the employer's requirement. The payment shall be payable in accordance with and subject to terms decided during the award of contract, in equated monthly installments. Payment to commence from Completion Date and be made through the maintenance period.

The Water & Electric Charges during the 3 year maintenance shall be borne by GSCL; however, the payment to the concerned utility authority shall be made by the Contractor & shall reimburse the same in the subsequent RA bill by producing original invoices. Payment shall be made at actual & this payment shall be over & above the quoted price by the Contractor for each year of maintenance services.

## G. SPECIAL CONDITIONS OF CONTRACT

### 66 Labour:

The contractor shall, unless otherwise provided in the Contract, make his own arrangements for the engagement of all staff and labour, local or other, and for their payment, housing, feeding and transport.

The contractor shall, if required by the Engineer, deliver to the Engineer a return in detail, in such form and such intervals as the Engineer may prescribed, showing the staff and the numbers of the several classes of labour from time to time employed by the Contractor on the Site and such other information as the Engineer may require.

### 67 Compliance with Labour Regulations:

During continuance of the contract, the contractor and his sub-contractors shall abide at all times by all existing labour enactments and rules made there under, regulations, notifications and bye laws of the State or Central Government or local authority and any other labour law (including rules), regulations, bye laws that may be passed or notification that may be issued under any labour law in future either by the State or the Central Government or the local authority. Salient features of some of the major labour laws that are applicable to construction industry are given below. The Contractor shall keep the Employer indemnified in case any action is taken against the Employer by the competent authority on account of contravention of any of the provisions of any Act or rules made there under, regulations or notifications including amendments. If the Employer is caused to pay or reimburse, such amounts as may be necessary to cause or observe, or for non-observance of the provisions stipulated in the Notifications/bye laws/Acts Rules/regulations including amendments, if any, on the part of the Contractor, the Engineer/Employer shall have the right to deduct any money due to the Contractor including his amount of performance security. The Employer/Engineer shall also have right to recover from the

Contractor any sum required or estimated to be required for making good the loss or damage suffered by the Employer.

The employees of the Contractor and Sub-Contractor in no case shall be treated as the employees of the Employer at any point of time.

#### SALIENT FEATURES OF SOME MAJOR LABOUR LAWS APPLICABLE TO ESTABLISHMENTS ENGAGED IN BUILDING AND OTHER CONSTRUCTION WORK.

- a) Workman Compensation Act 1923:- The Act provides for compensation in case of injury by accident arising out of and during the course of employment.
- b) Payment of Gratuity Act 1972:- Gratuity is payable to an employee under the Act of satisfaction of certain conditions on separation if an employee has completed 5 years service or more on death, the rate of 15 days wages for every completed year of service. The Act is applicable to all establishments employing 10 more employees.
- c) Employees P.F. and Miscellaneous Provision Act 1952:- The Act provides for monthly contributions by the employer plus workers @ 10% or 8.33%. The benefits payable under the Act are:
  - (i) Pension or family pension on retirement or death, as the case may be.
  - (ii) Deposit linked insurance on the death in harness of the worker.
  - (iii) Payment of P.F. accumulation on retirement/death etc.
- d) Maternity Benefit Act 1951:- The Act provides for leave and some other benefits to women employees in case of confinement or miscarriage etc.
- e) Contract Labour (Regulation & Abolition) Act 1970:- The Act provides for certain welfare measures to be provided by the Contractor to contract labour and in case the Contractor fails to provide, the same are required to be provided, by the Principal Employer by Law. The Principal Employer is required to take Certificate of Registration and the Contractor is required to take license from the designated Officer. The Act is applicable to the establishments or Contractor of Principal Employer, if they employ 20 or more contract labour.
- f) Minimum Wages Act 1948:- The Employer is supposed to pay not less than the Minimum Wages fixed by appropriate Government as per provisions of the Act, if the employment is a scheduled employment. Construction of Buildings, Roads, Runways are scheduled employments.

- g) Payment of Wages Act 1936:- It lays down as to by what date the wages are to be paid, when it will be paid and what deductions can be made from the wages of the workers.
- h) Equal Remuneration Act 1979:- The Act provides for payment of equal wages for work of equal nature to Male and Female workers and for not making discrimination against female employees in the matters of transfers, training and promotion etc.
- i) Payment of Bonus Act 1965:- The Act is applicable to all establishments employing 20 or more employees. The Act provides for payments of annual bonus subject to a minimum of 8.33% of wages and maximum of 20% of wages to employees drawing Rs. 3500/- per month or less. The bonus to be paid to employees getting Rs. 2500/- per month or above up to Rs.3500/- per month shall be worked out by taking wages at Rs. 2500/- per month only. The Act does not apply to certain establishments. The newly set-up establishments are exempted for five years in certain circumstances. Some of the State Governments have reduced the employment size from 20 to 10 for the purpose of applicability of this Act.
- j) Industrial Disputes Act 1947:- The Act lays down the machinery and procedure for resolution of Industrial disputes, in what situation a strike or lockout becomes illegal and what are the requirements for laying off or retrenching the employees or closing down the establishment.
- k) Industrial Employment (Standing Orders) Act 1946:- It is applicable to all establishments employing 100 or more workmen (employment size reduced by some of the State and Central Government to 50). The Act provides for laying down rules governing the conditions of employment by the Employer on matters provided in the Act and get the same certified by the designated Authority.
- l) Trade Unions Act 1926:- The Act lays down the procedure for registration of trade unions of workmen and employers. The Trade Unions registered under the Act have been given certain immunities from Civil and criminal liabilities.
- m) Child Labour (Prohibition & Regulation) Act 1986:- The Act prohibits employment of children below 14 years of age in certain occupations and processes and provides for regulation of employment of children in all other occupations and processes. Employment of Child Labour is prohibited in Building and Construction Industry.
- n) Inter-State Migrant Workmen's (Regulation of Employment & Conditions of Service) Act 1979:- The Act is applicable to an establishment which employs 5 or more inter-state migrant workmen through an intermediary (who has recruited workmen in one state for employment in the establishment situated in another State). The Inter-State migrant workmen, in an establishment to which this Act becomes applicable, are required to

be provided certain facilities such as housing, medical aid, traveling expenses from home up to the establishment and back, etc.

- o) The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act 1996 and the Cess Act of 1996:- All the establishments who carry on any building or other construction work and employs 10 or more workers are covered under this Act. All such establishments are required to pay cess at the rate not exceeding 2% of the cost of construction as may be modified by the Government. The Employer of the establishment is required to provide safety measures at the Building or Construction work and other welfare measures, such as Canteens, First-Aid facilities, Ambulance, housing accommodation for workers near the work place etc. The Employer to whom the Act applies has to obtain a registration certificate from the Registering Officer appointed by the Government.
  
- p) Factories Act 1948:- The Act lays down the procedure for approval of plans before setting up a factory, health and safety provisions, welfare provisions, working hours, annual earned leave and rendering information regarding accidents or dangerous occurrence to designated authorities. It is applicable to premises employing 10 persons or more with aid of power or 20 or more persons without the aid of power engaged in manufacturing process.

SECTION 4

CONTRACT DATA

## 68 Contract Data

Items marked "N/A" do not apply in this Contract.			
Sl No	Item	GCC clause no.	Data
1	The name and identification number of the Contract		Design, Construction and 5 years Maintenance Of Design and Development of Deepor Beel on EPC mode at Jalukbari in Guwahati, Assam SPV/GSCL/.....
2	The Employer	1.1	MD, GSCL
3	The Engineer	1.1	Will be intimated later
4	The Defects Liability Period	1.1 & 40	3 years from the date of completion
5	Start Date	1.1	The start date shall be 7 days for the date of issue of the Notice to proceed with the work.
6	The Intended Completion Date for the whole of the Works	16 & 34	The Intended Completion Date for the whole of the Works is 6 months after start of work with the following milestone  Milestone to be achieved during the contract period  Mile stone 1 --- 15% of the entire contract work in 25% of the period allowed for completion of construction  Mile stone 2 --- 40% of the entire contract work in 50% of the period allowed for completion of construction  Milestone 3 ---- 75% of the entire contract work in 75% of the period allowed for completion of construction  Milestone 4.....100% of the entire contract work within the period allowed for completion of construction
7	The Site Location	1.1	The site location is at Jalukbari, Guwahati
8	The Law which applies to the contract	3.1	The law which applies to the contract is the law of Union India
9	The Language of the contract	3.1	English
10	The Schedule of key personnel	ITB/Section-1/4.2(o)	As per list provided in ITB/Section-1/4.2(o)
11	The Schedule of Key Equipments	Section-1/4.2(n)	As per list provided in ITB/Section-1/4.2(n)
12	The Minimum insurance cover	12	The minimum insurance cover for physical property, injury and death is Rs. 5 lakhs per

			occurrence with the number of occurrences limited to four. After each occurrence, contractor will pay additional premium necessary to make insurance valid for four occurrences always.
13	Site Investigation Report	13.1	Not available
14	Site Possession Date		The Site possession Dates shall be 4 days from the date of notice to proceed with the work
15	The period for submission of the programme for approval of Engineer	33.1	The period for submission of the programme for approval of Engineer shall be 21 days from the issue of Letter of Acceptance.
16	The period between programme updates	33.3	The period between programme updates shall be 30 days
17	The amount to be withheld for late submission of an updated programme	33.3	The amount to be withheld for late submission of an updated programme shall be Rs. 10.00 lakhs.
18	The currency of the contract	51	The currency of the contract is Indian Rupees
19	Retention money	53	The proportion of payments retained (retention money) shall be 8% from each bill
20	Liquidated Damage	54	Amount of liquidated damages for delay in completion of works 1% per week of contract price for whole / part of work as fixed per mile stone at item 6 of contract data , rounded off to the nearest thousand
21	Maximum limit of Liquidated damages	54	Maximum limit of liquidated 10 percent of the Initial Contract damages for delay in completion of price rounded off to the nearest thousand
22	Performance Security	55	Performance security for 2 percent of contract price plus Rs ( to be decided after evaluation of the bid) as additional security
23	The percentage to apply to the value of work not completed representing the employers additional cost for completing the works	62.1	The percentage to apply to the value of work not completed representing the employers additional cost for completing the works shall be 20 ( twenty ) percent

SECTION- 5

SPECIAL CONDITION OF CONTRACT

## 69 SPECIAL CONDITIONS OF CONTRACT (SCC)

The general conditions of contract set forth in F.2 from (under the nomenclature “conditions of contract” shall be modified to the extent provided here under as SCC. Wherever the SCC is at variance with GCC, SCC will govern.

SCC 1 (Against GCC-55) the total Security Deposit (SD) will be 10% of contract price with 2% deposited within 21 days of the issue of letter of acceptance as per ITB in the form of, B.G/ FDR and balance 8% deducted from interim bills. The Bid security furnished with Bid will be discharged after furnishing the 2% SD. The SD will be held by GSCL free of any interest.

SCC 2 ( Against GCC 48)

Payment of contractor’s bills for works done shall be subject to availability of fund and delayed payments will not bear any interest.

SCC 3 (Against GCC 38, 39)

Contractor will supply all materials and equipment required for the performance of the contract. All materials supplied by the contractor shall conform to quality specified in relevant CPWD/IRC/MOST/ISI standard, which shall be confirmed by Quality control Tests as per direction of the Engineer in charge.

SCC 4 (Against GCC 38,39)

- a) To ensure that the works are carried out in compliance with the technical specifications laid down under the contract, the contractor shall carry out necessary all Quality Control (QC) tests required as per relevant IRC/IS specification under the direction and supervision of Engineer in charge or staff deputed by him.
- b) In addition to the internal Quality Control (QC) tests as mentioned above, there shall be provision also for conducting Quality Control tests by a separate Quality Control Team deputed by Employer if required for which the contractor shall provide all facilities as and when notified by the Engineer in charge. In the event of any item of working failing to meet the stipulated quality criteria as per the test carried out by the QC team, 25% of the amount due to the contractor in all his subsequent bills shall be deducted and shall not be released till such time as he rectifies the said defect.
- c) The contractor shall arrange all equipment for the Quality Control equipments required as per relevant IRC/IS publication and carry out installation of the same as required for performance of Quality Control tests and as per direction of the engineer in charge.

SCC 5 (Against GCC 40)

The defect liability period shall be 1 ( One) year for the date of certification of completion of works. Any defect during the liability period shall be made good by the contractor at his own cost.

SCC 6

- a) The contract must not be sublet.
- b) No labour under 14 years of age shall be employed in the work. All labourers employed shall be paid at rates not less than those generally paid for similar work in the neighbourhood. The contractor must employ in the execution of contract only Indian citizen as workers.
- c) If the work is not started within 7(Seven) days from the date of written formal work order for commencement of work, the security deposit will stand forfeited to the Employer and such failure to commence work in time will make him liable to other action as per clauses of the contract agreement.
- d) The work shall be carried out with diligence and promptness according to the specification in all cases, to the requirements program, quality of work and materials etc.
- e) The contractor should thoroughly acquaint himself with all the clauses of the contract and agree to the conditions laid down therein and in this Tender document.
- f) The rates shall be provided for the finished items of work including cost of materials labour and transportation which shall also include the cost of various sundries and contingencies and no extra amount will be admissible to the contractor for these –
  - i. The contractor shall include the cost of labour, camps or huts when necessary in suitable place including conservancy and sanitary arrangements therein to the satisfaction of local Public Health authority.
  - ii. Suitable water supply arrangements for staff and labour shall have to be made by the contractor at their own cost and no extra payment will be made by the department for this purpose.
  - iii. Suitable fencing barriers and signal sign and caution board etc. also will have to be provided where necessary at work and at approaches to protect public and employees from accident.
  - iv. Compensation including cost of suit for injury to person or property due to neglect of any measure of precaution and also sum which may become payable due to operation of workman's compensation Act.
  - v. Royalty, Octroy duty, sales tax on turnover on all items if levied by the Govt. cost of construction of temporary buildings required by the contractor for collection of materials, storage house for the contractors and staff or other purpose of the work. No rent shall however be payable to the Govt. for temporary occupation of available land owned by the Govt. at site of works which should be vacated by the contractor after completion of work.
    - a. Fee dues payable to municipality of water supply authority.
  - vi. Suitable apparatus for labour engaged in risky operation.
  - vii. Clearance of site before commencement of work.
- g) Every contractor is expected before quoting his rate to inspect the site of the proposed work. He should also inspect the quarries and satisfy himself about the quality and availability of various materials of required specification. The Employer will not pay any extra charges or compensation for supply of substandard materials which will be rejected and have to be removed and replaced by the contractors at their own cost.

- h) In the event of any claim by Forest department that the contract has extracted materials in excess of the quantity stated in the permit. Royalty as will be charged by the Forest department on account of the excess materials will be recovered by the Employer from any sum due to the contractor by the State Govt. under the contract or otherwise from his security deposit or the proceed of sales thereof or sufficient part thereof. The sum so recovered shall be placed in deposit for credit to the Forest department after settlement of their claim.
- i) In case of quarries when Forest department's quarry roads are used necessary road toll levied by the forest department should be paid by the contractor. If the contractor cannot produce any such toll clearance certificate the sum so due will be deducted from contractor's bill and will be credited to Forest Revenue.
- j) Compensation for obtaining soil from private land if any will be paid by the contractor. The rate for imported soil should be quoted inclusive of royalty.
- k) No claim of contractor would be entertained if any boulders, trunk of trees etc. are met with while cutting earth.
- l) Payment will be made as per clause of Contract. Interim payment will be made on the basis of actual measurement of work carried out by the contractor on the basis of their accepted rates.
- m) The contractor must maintain adequate technical staff well conversant with similar work, so as the facilities quick and satisfactory progress of work.
- n) Income tax at 2% will be deducted from the contractor's bill, besides other recoverable.

#### SCC 7. ENGAGEMENT OF LOCAL TECHNICAL PERSON:

The contractor will have to engage qualified local Engineers and sub-engineers etc. as required in case of class-1 (group A, B & C) registered staff, P.W.D. Contractor.

#### SCC 8. UNWANTED EMPLOYEE:

The Engineer in charge may be require the Contractor to dismiss or remove from the site of work any person employed by the contractor for the work who may be incompetent or misconduct himself and the Contractor shall forthwith comply with such requirement.

#### SCC 9: SCHEDULE OF EXECUTION

Contractor shall submit the schedule of execution in the form of bar chart/C.P.M, which shall be approved by the competent Engineer Officer of the implementing agency before commencement of work. Such bar chart/C.P.M. shall at various work stages.

#### SCC 10: TIME DELAY AND EXTENSION

(A) Time is the essence of the contract and specified in the contract documents or in each individual work orders.

As soon as possible contract is let or any substantial work orders placed and before work under it is begun, the engineer in charge and the contractor shall agree upon a Time and Progress chart. The Chart shall be prepared in direct relation to the time stated in the contractiveness or the Work order for completion of the individual items thereof and / or the contract of the order as a whole. It shall indicate the forecast of the dates for commencement and completion of the various trade processes or sections of the work and shall be amended as may be required by agreement between the Engineer In charge and the contractor within the limitation of time imposed in the contract documents or work order. If the work be delayed :-

- a) By force majeure such as acts of God, acts of public enemy, acts of Government, floods, epidemics, etc., or
- b) By reason of abnormally bad weather, or
- c) By reason of serious loss or damage by fire, or
- d) By reason of commotion, local combination of workmen, strike or lockout, or
- e) By reason of delay on the part of other Contractors or tradesmen engaged by the Employer in executing Works not forming part of the Contract, or
- f) By reason of non-availability of stores which are the responsibility of the Employer to supply, or
- g) By reason of the ordered variations namely the amount or nature of extra or additional work referred in this tender document, or
- h) By reason of any other cause, which in the absolute discretion of the accepting officers beyond the contractors control.

Then in such case the officer herein after mentioned may make fair and reasonable extension in the completion dates of individual items or groups of items of works for which separate periods of completion are mentioned in the contract documents or works order, as applicable.

Upon the happening of any such event causing delay, the contractor shall immediately, but not later than 30 days of the happening of the event, give notice thereof in writing to the Employer, but shall never the less use constantly his best endeavor to prevent or make good delay and shall do all that may reasonably be required to the satisfaction of the Employer/ Engineer to proceed with the works. Extension of time shall be granted as under: -

- a) By Employer for all terms contracts;

In case of the contractor fails to notify the Employer/ Engineer of happening of an event (s) causing delay within the period of 30 days stipulated in sub-para above, he shall forfeit his right to claim extension of time for the delay caused due to such event(s).

Extension of time, as granted above, shall be communicated to the contractor by the Employer in writing and shall be final and binding.

(B) No claim in respect of compensation or otherwise, however arising, as a result or extensions granted under conditions (A) above shall be admitted.

**SSC 11: PRECAUTIONS AGAINST RISKS:**

The contractor shall be responsible at his own expense for precautions to prevent loss or damage from any and all risks other than for Accepted Risks and to minimize the amount of any loss or damage and for the provision of all protective works, casings, etc., required for the purpose, until the works have been handed over complete to the Engineer in charge.

**SSC 12: Death or Permanent invalidity of Contractor**

If the contractor is an individual or proprietary concerned, dies during the currency of the contract or becomes permanently incapacitated and where the surviving partners are only minors, the contract shall be closed without levying any damages/ compensation.