SECTION 3

GENERAL CONDITIONS OF CONTRACT (GCC)

A. GENERAL

1. Definitions

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

1) **ACC** means Additional Conditions of Contract
2) **Bill of Quantities** means the priced and completed Bill of Quantities forming part of the bid.
3) **Compensation Events** are those defined in **Clause 44**
4) **Completion Date** is the date of completion of the Works as certified by the Engineer-in-Charge in accordance with **Sub Clause 17.1**
5) **Contract** is the contract between the Department and the Contractor to execute and complete the Works.
6) **Contract Data** defines the Documents and other information which comprise the Contract
7) **Contractor** is a person or corporate body whose Bid has been accepted by the Department.
8) **Contractor's** is the completed **Bid** Bidding documents submitted by the Contractor to the Department.
9) **Contract Price** is the price stated in the letter of acceptance and thereafter as adjusted in accordance with the provisions of the Contract.
10) **Dispute Redress Committee** is a Committee appointed by Chief Secretary to the Government of Mizoram to resolve disputes in the first instance.
11) **Department**" means Public Engineering Department, Health Govt. of Mizoram.
12) **Days** are calendar days, **Months** are calendar months and **Years** are calendar years.
13) **Defect** is any part of the Works not completed in accordance with the Contract.
14) **Defects Liability Period** is the period named in the Contract Data calculated from the Completion Date.
15) **Effective Date** means the date of fulfillment of all conditions stated in the Article 3 (Effective Date) of the Contract Agreement, upon which the period until the time for completion shall be counted from.
16) **Employer** is the party who will employ the Contractor to carry out the work.
17) **Engineer-in-Charge** is the Executive Engineer of the concerned Division or any Engineer appointed by the Engineer-in-Chief who is responsible for supervision and administration of the Contract on behalf of the Department.
18) **Equipment** is the Contractor's machinery Site and to the construct the Works.
19) **GCC** means General Conditions of Contract
20) **Initial Contract Price** is the Contract Price listed in the Letter of Acceptance.
21) **Intended Completion Date** is the date on which it is intended to complete the Work and is as specified in the Contract Data.
22) **Key Personnel** are those employed / proposed to be employed by the Contractor at the Project Site, who are in possession of a valid Competency Certificate through a program run under the auspices of a University, State Technical Board, Ministry of Government of India.
23) **Materials** are all supplies, including consumables, used by the contractor for incorporation in the Works.
24) **Party** means the Employer or the Contractor as the context requires
25) **Plant** is any integral part of the Works which have mechanical, electrical, electronic or chemical or biological function.
26) **Site** means the land/or places on, into or through which work is to be executed under the contract or any adjacent land, path or street through which work is to be executed under the contract or any adjacent land, path or street which may be allotted or used for the purpose of carrying out the contract.
27) **SCC** means Special Conditions of Contract
28) **Site Investigation Reports** are those factual interpretative reports about the surface and sub-surface conditions of the site.

29) **Specification** means the Specification of the Works included in the Contract and any modification or addition made or approved by the Engineer-in-Charge.
30) **Start Date** is the date when the Contractor shall commence execution of the works as indicated in the Contract Data upon which the period until the Time for Completion shall be counted from.
31) **Sub-contractor** is a person or corporate body who has a Contract with the Contractor to carry out a part of the work in the Contract which includes work on the Site.
32) **Temporary Works** are works designed, constructed, installed and removed by the Contractor which are needed for construction or installation of the Works.
33) **Variation** is an instruction given by the Engineer-in-Charge which varies the Works.
34) **Works** are what the Contract requires the Contractor to construct, install and handover to the Department as defined in the Contract Data.

2. Interpretation

2.1 In interpreting these Conditions of Contract, singular also means plural, male also means female or neuter and vice versa. Headings have no significance. Words have their normal meaning under the language of the Contract unless specifically defined. The Engineer-in-Charge will provide instructions clarifying queries about the Conditions of Contract.

2.2 If **sectional completions (Milestones)** are specified in the Contract Data, 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 are intended to be correlative, complementary, and mutually explanatory and, shall be interpreted in the following order of priority:

(1) Contract Agreement
(2) Letter of Acceptance and notice to proceed with works
(3) Contractor's Bid
(4) General Conditions of Contract including Additional Conditions and Special Conditions of Contract
(5) Specifications
(6) Drawings
(7) Bill of quantities and
(8) Any other doc**u**ments listed in the Contract Data as forming part of the Contract.

3. **Language and Law**

3.1 The language of the Contract and Law governing the Contract are **as stated in the Contract Data.**

4 Engineer-in-Charge's Decision

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

5 Delegation:

5.1 The Engineer-in-Charge may delegate any of his duties and responsibilities to any other Engineer after notifying the Contractor and may cancel any delegation after notifying the Contractor.

6. Communications

6.1 Communications between parties which are referred to in the Contract are effective only when in writing. A notice shall be effective only when it is delivered (in terms of Indian Contract Act 1872).

7. Joint Venture

7.1 Two or three companies/contractors may jointly undertake contract/contracts. Each entity would be jointly responsible for completing the task as per the contract.

8 Sub-contracting

8.1 The Engineer-in-Charge may allow the Contractor to Sub-Contract any portion of work with the prior approval of the Engineer-in-Chief. Sub-contracting does not alter the Contractor's obligations.

8.2 **Other Contractors**

The Contractor shall co-operate and share the Site with other contractors, public authorities, utilities, and the

Employer between the dates given in the Schedule of other contractors. The Contractor shall as referred to in the **Contract Data**, also provide facilities and services for them as described in the Schedule. The employer may modify the schedule of other contractors and shall notify the contractor of any such modification.

9. Key Personnel

9.1 The Contractor shall employ at least the minimum key personnel **specified in the Annexure –II of ITB** or other personnel approved by the Engineer-in-Charge to carry out the Contract. The Engineer-in-Charge 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 Key Personnel listed in the Annexure - II.

9.2 If the Engineer-in-Charge asks the Contractor to remove a person who is a member of staff of his work force stating the reasons, the Contractor shall ensure that the person leaves the Site within seven days and has no further connections with the work in the Contract.

10. Employer's and Contractor's Risks

10.1 The Employer carries the risks which this Contract states are Employer's risks and the Contractor carries the risk which this Contract states are Contractor's risks.

11 Employer's Risks

11.1 The Employer is responsible for the excepted risks, which are:

(a) in so far as they directly affect the execution of the Works; i) risk of war, hostilities, invasion, act of foreign enemies, ii) rebellion, revolution, insurrection, or military or usurped power, civil war, iii) contamination from any nuclear fuel or nuclear waste or radioactive toxic explosives iv) riot, commotion or disorder, unless solely restricted to the employees of the Contractor, and iv) earthquakes, Tornadoes or

(b) a cause due solely to the design of the Works, other than the Contractor's design.

(c) any operation of the forces of nature (in so far as it occurs on the Site), which an experienced contractor:

(i) could not have reasonably foreseen, or

(ii) could reasonably have foreseen, but against which he could not reasonably have taken at least one of the following measures:

(1) prevent loss or damage to physical property from occurring by taking appropriate measures, or

(2) insure against.

12 **Contractor's Risks**

12.1 All risks of loss of or damage to physical property and of personal injury and death which arise during and in consequence of the performance of the Contract other than the excepted risks are the responsibility of the Contractor.

13 **Insurance**

13.1 The Contractor shall provide in the joint names of the Employer and the Contractor, insurance cover from the Start Date to the end of the Defects Liability Period, in the amounts and deductibles **stated in the Contract Data f**or the following events which are due to the Contractors 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.

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

13.3 If the Contractor does not provide any of the policies and certificates required, the Employer may effect the insurance which the Contractor should have provided 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.

13.4 Alterations to the terms of insurance shall not be made without the approval of the Engineer-in-Charge.

13.5 Both parties shall comply with all conditions of the insurance policies.

14 Site Investigation Reports

14.1 The Contractor, in preparing the Bid, shall rely on the Site **Investigation Report referred to in the Contract Data**, supplemented by any information available to the Bidder.

15 Queries about the Contract Data.

15.1 The Engineer-in-Charge will clarify queries on the Contract Data.

16 Contractor to Construct the Works.

16.1 The Contractor shall construct and install the Works (whole and every part of the work) in the most substantial and workmanlike manner both with regard to materials and otherwise in every respect in strict accordance with the specifications. The contractor shall also conform exactly, fully and faithfully to the design, drawings and instructions in writing in respect of the work assigned by the Engineer-in-Chief. The contractor shall comply with the provisions of the contract and with due care and diligence execute and maintain the works and provide all labor and materials, tools and plants including for measurements and supervision of all works, structural plans and other things of temporary or permanent nature required for such execution and maintenance in so far as the necessity for providing these is specified or is reasonably inferred from the contract. The Contractor shall take full responsibility for adequacy, suitability and safety of all the works and methods of construction.

16.2 In the case of any class of work for which there is no such specifications as referred to in Sub-Clause 16.1 above, such work shall be carried out in accordance with the Bureau of Indian Standards Specifications. In case there are no such specifications in Bureau of Indian Standards, the work shall be carried out as per manufacturers "Specifications. In case there are no such specifications as required above, the work shall be carried out in all respects in accordance with the instructions and requirements of the Engineer-in-Charge.

16.3 The detailed description of works under this Contract are indicated in the **Annexure-I to Contract Data**

17 The Works to Be Completed by the Intended Completion Date.

17.1 The Contractor shall commence execution of the Works on **the Start Date** and shall carry out the Works in accordance with the program submitted by the Contractor as updated with the approval of the Engineer-in-Charge, and complete them by **the Intended Completion Date.**

18 Approval by the Engineer-in-Charge.

18.1 The Contractor shall submit Specifications and Drawings showing the proposed Temporary Works to the Engineer-in-Charge, who is to approve them if they comply with the specifications and Drawings.

18.2 The Contractor shall be responsible for design of Temporary Works.

18.3 The Engineer-in-Charge's approval shall not alter the Contractor's responsibility for design of the Temporary Works

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

19 Safety.

19.1 The Contractor shall be responsible for the safety of all activities on the Site.

20 Discoveries.

20.1 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-in-Charge of such discoveries and carry out the Engineer-in-Charge's instructions for dealing with them.

21 **Possession of the Site.**

21.1 The Department shall give possession of all parts of the Site to the Contractor, free from encumbrances. If possession of a part of site is not given by the **date stated in the Contract Data** the Department is deemed to have delayed the start of the relevant activities and this will be a Compensation Event.

22 **Access to the Site**

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

23 **Instructions**

23.1 The Contractor shall carry out all instructions of the Engineer-in-Charge pertaining to works which comply with the applicable laws where the site is located.

23.2 The Contractor shall permit the Department he to performance of Contract and to have them audited by the Auditors appointed by the Department, if so required by the Fepartment.

24 **Disputes & Dispute Redress Committee**

24.1 If the Contractor believes that a decision taken by the Engineer-in-Charge is either outside the authority given to the Engineer-in-Charge by the Contract or that the decision was wrongly taken, the decision shall be referred to the **Dispute Redress Committee** within 28 days of the notification of the Engineer-in-Charge's decision.

24.2 D**ispute Redress Committee (DRC)** shall be constituted by the Government of Mizoram, comprising of the following Members:

a) Secretary, PHE Department –Chairman
b) Joint Secretary (Technical), PHE Department –Member Secretary
c) Engineer-in-Chief –Member
d) 2(two) Representatives of Law & Judicial Department –Member
e) One Chief Engineer (other than under whose jurisdiction work falls) –Member
f) One Superintending Engineer (other than under whose jurisdiction work falls) - Member

25 Settlement of Disputes

25.1 Disputes, if any, shall be referred to the DRC only after exhausting all other remedies available at every level of the concerned officers of the Department.

If the contractor considers any work demanded of him to be outside the requirements of the contract, or disputes any drawings, record or decision given in writing by the Engineer-in-Charge on any matter in connection with or arising out of the contract or carrying out of the work, to be unacceptable, he shall period or if the contractor is dissatisfied with the instructions or decision of the Superintending Engineer, the contractor may, within 15 days of the receipt of Superintending Engineer" Chief Engineer who shall afford an opportunity to the contractor to be heard, if the latter so desires, and to offer evidence in support of his appeal. The Chief Engineer shall give his decision within 30 days of receipt of contractor's appeal.

If the contractor is dissatisfied with the decision of the Chief Engineer, the contractor may within 30 days from the receipt of the Chief Engineer decision, appeal before the Dispute Redress Committee (DRC) along with a list of disputes with amounts claimed in respect of each such dispute and giving reference to the rejection of his disputes by the Chief Engineer.

The Committee shall hear both the parties, and suggest an amicable and legitimate solution to the problem, based on the principle of equity and natural justice. If the same is acceptable to both the parties, it shall be conveyed for implementation. The Dispute Redress Committee (DRC) shall give his decision within a period of 90 days from the receipt of Contractor's appeal

If the Dispute Redress Committee (DRC) fails to give his decision within the aforesaid period or any party is dissatisfied with the decision of Dispute Redress Committee (DRC), then either party may within a period of 30 days from the receipt of the decision of Dispute Redress Committee (DRC), give notice to the Engineer-in-Chief for appointment of arbitrator on prescribed form **as per Form –XX at Section 2,** failing

which, the said decision shall be final binding and conclusive and not referable to adjudication by the arbitrator.

25.2 The Arbitration shall be conducted in accordance with the arbitration procedure stated in the Special Conditions of Contract.

B. TIME CONTROL

27 Program

27.1 The Contractor shall commence work on the **start date specified in the Contract Data** and shall thereafter catch up with the specified schedule at all times. In case, the work cannot be started due to reasons not within the control of the contractor within 1/8th of the stipulated time for completion of work or one month whichever is higher, either party may close the contract. In case the contractor wants to close the contract, he shall give notice to the department stating valid reasons clearly. If the Contractor withdraws from the Contract due to the default of the Department, the Earnest Money Deposit and the Performance Guarantee of the contractor shall be refunded, but no payment on account of interest, loss of profit or damages etc. shall be payable at all.

27.2 The Contractor shall attain Completion of the Works and each of the Milestones within the **Intended Completion Time stated in the Contract Data** or within such extended time to which the Contractor shall be entitled.

27.3 **Within the time stated in the Contract Data** the Contractor shall submit to the Engineer-in-Charge for approval, a Program showing the general methods, arrangements, order, and timing for all the activities in the Works along with quarterly cash flow forecast.

27.4 An update of the Program shall be a program 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.

27.5 The Contractor shall submit to the Engineer-in Charge for approval, an updated program at intervals no longer than the **period stated in the Contract Data**. If the contractor does not submit an updated program within this period the Engineer-in-Charge 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 program has been submitted.

27.6 The Engineer‟s approval of the program shall revise the program and submit to the Engineer again at any time. A revised program is to show the effect of variations and compensation events.

28 Extension of the Intended Completion Date

28.1 The Engineer-in-Charge shall extend the intended completion date not exceeding 15 (Fifteen) days within his power 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.

28.2 The Engineer-in-Charge shall decide whether and by how much to extend the intended completion date within 21 days of the contractor asking 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 accessing the new intended completion date.

28.3 The Engineer-in-Charge shall, within 14 days of receiving full justification from the contractor for extension of intended completion date, refer his decision to the competent authority (if beyond the power of the Engineer-in-Charge himself). The competent authority shall, in not more than 21 days,
communicate to the Engineer-in-Charge the acceptance or otherwise of the Engineer-in-Charge's decision. If the Department fails to give its acceptance, the Engineer-in-Charge shall not grant the extension and the contractor may refer the matter to the Dispute Redress Committee under Clause 24.1.

28.4 The Contractor shall, at all times renders reasonable efforts to minimize any delay in the performance of its obligations under the Contract. In all cases where the Contractor has given a notice of a claim for an extension

of time, the Contractor shall consult with the Engineer-in-Charge in order to determine the steps which can be taken to overcome or minimize the actual or anticipated delay. The Contractor shall thereafter comply with all reasonable instructions which the Engineer-in-Charge shall give in order to minimize such delay.

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30 Delays ordered by the Engineer-in-Charge

30.1 The Engineer-in-Charge may instruct the Contractor to delay the start or progress of any activity within the works.

31. Management Meetings.

31.1 Either the Engineer-in-Charge or the Contractor may require the other to hold 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.

31.2 The Engineer-in-Charge shall record the business of management meetings and is to provide copies of his record to those attending the meeting. The responsibility of the parties for actions to be taken is to be decided by the Engineer-in-Charge at the management meeting or after the management meeting and stated in writing to all who attended the meeting.

32 Early Warning

32.1 The Contractor is to warn the Engineer-in-Charge, at the earliest opportunity, of likely future events or circumstances that may adversely affect the quality of the work, increase in Contract Price or delay in execution of works. If the Engineer-in-Charge may require the Contractor to provide an estimate of the expected effect of the event or circumstance on the Contract Price and Completion Date, such estimate is to be provided by the Contractor as soon as reasonably possible.

32.2 The Contractor shall cooperate with the Engineer-in-Charge 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-in-Charge.

C. QUALITY CONTROL

33. Identifying Defects

33.1 The Engineer-in-Charge 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-in-Charge may instruct the Contractor to search for a Defect and to uncover and test any work that the Engineer-in-Charge considers may have a Defect.

34 **Tests.**

34.1 If the Engineer-in-Charge 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.

35 **Correction of Defects:**

35.1 **Defect Liability:** The Contractor warrants that all Works and Facilities or any part thereof shall be free from defects in the design, engineering, materials and workmanship of the Plant supplied and of the work executed. The Engineer-in-Charge shall give notice to the Contractor of any Defects before the end of the Defects Liability Period. The Defects Liability Period shall be extended for as long as Defects remain to be corrected.

35.2 The Defect Liability Period shall commence from the date of completion of the Works and shall extend for the period as **indicated in the Contract Data.**

If, during the Defect Liability Period, any defect should be found in the design, engineering, materials and workmanship of the Plant supplied or of the work executed, the Contractor shall promptly, at its cost, repair, replace or otherwise make good such defect as well as any damage to the Facilities caused by such defect. The Contractor shall not be responsible for the repair, replacement or making good of any defects or of any damage to the Facilities arising out of or resulting from any of the following causes:

(a) Improper operation or maintenance of the Facilities by the Department;
(b) Operation of the Facilities outside specifications provided in the Contract; or
(c) Normal wear and tear.

The Contractor's obligations under GC **Clause 35.2** shall not apply to underthis
(a) Any materials that are supplied by the Department, materials normally consumed in operation, or have a normal life shorter than the Defect Liability Period stated herein;
(b) Any designs, specifications or other data, designed, supplied or specified by or on behalf of the Department or any matters for which the Contractor has disclaimed responsibility herein;
(c) Any other materials supplied or any other work executed by other Contractor on behalf of the Department.

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

36. Uncorrected Defects.

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

D. COST CONTROL

37. Bill of Quantities

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

37.2 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.

37.3 The Contractor shall be deemed to have satisfied itself as to the correctness and sufficiency of the Contract Price, which shall, except as otherwise provided for in the Contract, cover all its obligations under the Contract.

37.4 **Measurement of Work done;**

37.4.1 Engineer-in-Charge shall, except as otherwise provided, ascertain and determine by measurement, the value of work done. All measurement of all items having financial value shall be entered in Measurement Book so that a complete record is obtained of all works performed under the contract and entered in Measurement Book and/or level field book so that a complete record is obtained of all works performed under the contract.

37.4.2 All measurements and levels shall be taken jointly by the Engineer-in-Charge and by the contractor from time to time during the progress of the work and such measurements shall be signed and dated by the Engineer-in-Charge and the contractor in token of their acceptance. If the contractor objects to any of the measurements recorded, a note shall be made to that effect with reason and signed by both the parties.

37.4.3 If for any reason the contractor or his authorized representative is not available and the work of recording measurements is suspended by the Engineer-in-Charge, the Department shall not entertain any claim from contractor for any loss or damages on this account. If the contractor or his authorized representative does not remain present at the time of such measurements after the contractor or his authorized representative has been given a notice in writing three (3) days in advance or fails to countersign or to record objection within a week from the date of the measurement, then such measurements recorded in his absence by the Engineer-in-Charge or his representative shall be deemed to be accepted by the Contractor.

37.4.4 The contractor shall, without extra charge, provide all assistance with every appliance, labour and other things necessary for measurements and recording levels.

37.4.5 Except where any general or detailed description of the work expressly shows to the contrary, measurements shall be taken in accordance with the procedure set forth in the specifications not withstanding any provision in the relevant Standard Method of measurement or any general or local custom. In the case of items which are not covered by specifications, measurements shall be taken in accordance with the relevant standard method of

measurement issued by the Bureau of Indian Standards and if for any item no such standard is available, then a mutually agreed method shall be followed.

37.4.6 The contractor shall give, not less than seven days notice to the Engineer-in-Charge, before covering up or otherwise placing beyond the reach of measurement any work in order that the same may be measured and correct dimensions thereof be taken before the same is covered up or placed beyond the reach of measurement and shall not cover up and place beyond reach of measurement any work without consent in writing of the Engineer-in-Charge or his authorized representative in charge of the work who shall, within the aforesaid period of seven days, inspect the work, and if any work shall be covered up or placed beyond the reach of Measurements without such notice having been given or the Engineer-in-Charge's consent being obtained in writing, the same shall be uncovered at the Contractor's expense, or in default thereof no payment or allowance shall be made for such work or the materials with which the same was executed.

37.4.7 Engineer-in-Charge or his authorized representative may cause either themselves or through another officer of the Department to check the measurements recorded jointly or otherwise as aforesaid and all provisions stipulated herein above shall be applicable to such checking of measurements or levels.

37.4.8 It is also a term of this contract that recording of measurements of any item of work in the measurement book and/or its payment in the interim, on account or final bill shall not be considered as conclusive evidence as to the sufficiency of any work or material to which it relates nor shall it relieve the contractor from liabilities from any over measurement or defects noticed till completion of the defects liability period.

38 Changes in the Quantities

38.1 If the final quantity of the work done differs from the quantity in the Bill of Quantities for the particular item by +/- 25 percent provided the change in price does not differ by +/- 5**%** of initial Contract Price, the Engineer-in-Charge shall adjust the rate(s), to allow for the change, duly considering,

a) Justification for rate adjustment as furnished by the Contractor,
b) Economies resulting from increase in quantities by way of reduced plant, equipment and overhead costs,
c) Entitlement of the Contractor to Compensation events where such events are caused by any additional works.

38.2 The Engineer-in-Charge shall not adjust rates from changes in quantities if thereby the Initial Contract Price is exceeded by more than 5(Five) percent except with the prior approval of the competent authority **as indicated in the Contract Data.**

38.3 If requested by the Engineer-in-Charge where the quoted rate (s) of any item(s) is abnormally high, the Contractor shall provide the Engineer-in-Charge with a detailed cost breakdown of such rate in the Bill of Quantities.

39. Variations

39.1 All variations shall be included in updated program produced by the contractor.

40. Payment for Variations:

40.1 The Contractor shall provide the Engineer-in-Charge with a Quotation (with breakdown of unit rates) for carrying out the Variation if requested to do so by the Engineer-in-Charge. The Engineer-in-Charge shall assess the quotation, which shall be given within 7 (seven) days of the request or within any longer period stated by the Engineer-in-Charge and before the variation are ordered.

40.2 For items not existing in the Bill of Quantities or substitution to items in the Bill of Quantities, rate payable should be determined by methods given below and in the order given below:

i) Rates and prices in the Schedule of Rates applicable to the Contract plus ruling percentage as notified by the Government.
i) Quotation of Contractor (with breakdown of unit rates) as approved by the Engineer-in-Charge.

40.3 For items in the bill of quantities but where quantities have increased beyond the variation limits, the rate

payable for quantity in excess of the quantity in the Bill of Quantity plus the permissible variation should be:

i) Rates and prices in contract if, in the opinion of the Engineer-in-Charge, the quantity of work above the limit stated in sub-clause 38.1 or the timing of its execution do not cause to cost per unit of quantity to change, failing which (ii) and (iii) below shall apply.
ii) Rates and prices in the Schedule of Rates applicable to the Contract plus ruling percentage as notified by the Government.
iii) Quotation of Contractor (with breakdown of unit rates) as approved by the Engineer-in-Charge.

40.4 If there is delay in the Employer and the contractor coming to an agreement on the rate of an extra item, rates as proposed by the Engineer-in-Charge shall be payable provisionally till such time as the rates are finally determined or till date mutually agreed.

40.5 If the Engineer-in-Charge 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.

41. Cash flow forecasts.

41.1 When the Program is updated, the contractor is to provide the Engineer-in-Charge with an updated cash flow forecast.

42 Payment Certificates (Contractor's Bill)

42.1 The contractor shall submit to the Engineer-in-Charge Quarterly statement of the estimated value of the work completed less the cumulative amount certified previously accompanied by invoices.

42.2 The Engineer-in-Charge shall check Quarterly statement the withincontractor‟s14daysandcertifythe amount to be paid to the contractor after taking into account any credit or debit for the Quarter in question in respect of materials for the work in the relevant amounts and under conditions set forth in sub-clause 51(4) (Secured advance).

42.3 The value of work executed shall be determined by the Engineer-in-Charge.

42.4 The value of work executed shall comprise the value of the quantities of the items in the Bill of Quantities completed.

42.5 The value of work executed shall include the valuation of variations and compensation events.

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

43. Payments

43.1 Bills shall be prepared and submitted by the Contractor as per CPWD Running Bill Form, clearly stating the estimated value of works completed less the cumulative amount previously certified. Joint measurements shall be taken continuously and recorded in the Measurement Book and need not be connected with billing stage. All measurements shall be signed by both Contractor and Engineer-in-Charge or his nominee.

43.3 Payment shall be adjusted for deductions for advanced payments, retention, other recoveries in terms of the contract and taxes at source, as applicable under the law. The Department shall pay the contractor the amount certified by the Engineer-in-Charge within **28 days** from the date of each certificate. If the Department delays payment of Bills to the Contractor under the circumstances that funds are readily available with the Department and the situations under which payment is delayed are within the control of the Department, the contractor shall be paid interest at the rate of 2% p.a. The interest shall be calculated from the date by which the payment should have been made till the date when the late payment is made.

43.4 Contractor shall submit final Bill within 60 days of issue of defects liability certificate. The Engineer-in-Charge shall check the bill within 60 days after its receipt and return the bill to Contractor for corrections, if any.

43.5 The contractor should re-submit the bill, with corrections within 30 days of its return by the Engineer-in-Charge. The re-submitted bill shall be checked and paid within 60 days of its receipt.

43.6 Deleted.

43.7 If an amount certified is increased in a later certificate as a result of an award by the Dispute Redress Committee or an Arbitrator, the Contractor shall be paid interest upon the delayed payment as set out in this clause. Interest shall be calculated from the date upon which the increased amount would have been certified in the absence of dispute.

43.8 Items of works for which no rate or price has been entered in will not be paid for by the Engineer-in-Charge and shall be deemed covered by other rates and prices in the Contract.

43.9 No Running/interim payment made by the Department herein shall be deemed to constitute acceptance of the Facilities or any part(s) thereof by the Department. All such interim payments shall be regarded as payment by way of advances against final payment only and shall not preclude the requiring of bad, unsound and imperfect or unskilled work to be rejected, removed, taken away and reconstructed or re-erected. Any certificate given by the Engineer-in-Charge relating to the work done or materials delivered forming part of such payment, may be modified or corrected by any subsequent such certificate(s) or by the final certificate and shall not by itself be conclusive evidence that any work or materials to which it relates is/are in accordance with the contract and specifications. Any such interim payment, or any part thereof shall not in any respect conclude, determine or affect in any way powers of the Engineer-in-Charge under the contract or any of such payments be treated as final settlement and adjustment of accounts or in any way vary or affect the contract.

44 Compensation Events

44.1 The following are Compensation Events, unless they are caused by the Contractor:

i. The Department does not give access to a part of the Site by the Site Possession Date stated in the Contract Data.

ii. The Department modifies the schedule of other contractors in a way which affects the work of the contractor under the contract.

iii. The Engineer-in-Charge orders a delay or does not issue drawings, specifications or instructions required for execution of works on time.

iv. The Engineer-in-Charge instructs the Contractor to uncover or to carry out additional tests upon work which is then found to have no Defects.

v. The Nodal Officer or his nominee unreasonably does not approve for a sub-contract to be let.

vi. 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 form a visual inspection of the site.

vii. The Engineer-in-Charge gives an instruction for dealing with an unforeseen condition, caused by the Department, or additional work required for safety or other reasons.

viii. Other contractors, public authorities, utilities or the Department does not work within the dates and other constraints stated in the Contract that cause delay or extra cost to the Contractor.

ix. The advance payment is delayed beyond 28 days after receipt of application and bank guarantee.

x. The effect on the Contractor of any of the Department's Risk

xi. The Engineer-in-Charge unreasonably delays issuing a Certificate of Completion.

xii. **Other Compensation Events listed in the Contract Data** or mentioned in the contract.

Whenever any compensation event occurs, the contractor will notify the employer, within 14 days and provide a forecast cost of the compensation event.

44.2 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 shall be extended. The Engineer-in-Charge or his nominee 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.

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

44.4 The contractor shall not be entitled to the extent that the Department's interest is adversely affected by the contractor not having given early warning or not having cooperated with the Engineer-in-Charge.

45 **Taxes and Duties**

45.1 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 sources as per applicable law. Any new or revision of Taxes, levies, duties imposed after signing the Contract shall be reimbursed by the employer on production of documentary evidence.

46. **Currencies**

46.1 All payments shall be made in Indian Rupees only **unless specifically mentioned in the Contract Data.**

47 Price Adjustment.

47.1 The Contract Price shall be fixed for the entire duration of the Contract and shall not be subject to escalation and adjustment on any account. However, only statutory variation limited to duties and taxes are considered for adjustment in contract price

47.2 BLANK

47.3 To the extent that full compensation for any rise or fall in costs to the contractor is not covered by the provisions of this or other clauses in the contract, the unit rates and prices included in the contract shall be deemed to include amounts to cover the contingency of such other rise or fall in costs.

47.4 Subsequent Legislation

If, after the date 28 (Twenty eight) days prior to the date for submission of Bid there occur changes to any National or Statute Stature, Ordinance or Decree or other Law or any regulation or bye law of any local or other duly constituted authority or introduction of any such state statute, Ordinance, De-cree, Law, regulation or bye law which causes additional or reduced cost to the contractor in execution of the contract, such additional or reduced cost shall after due consultation with the Employer and the contractor be determined by the Nodal Officer or his nominee and shall be added to or deducted from the contract price and the Nodal Officer or his nominee shall notify the contractor accordingly with a copy to the Employer.

48. Retention (Security Deposit)

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

48.2 Retention Money shall be deducted at 6% from every Running Bills subject to a max. of 5 percent of the contract price.

48.3 On completion of the whole of the Works, half the total amount retained is repaid to the Contractor and half when the Defect Liability Period has passed and the Engineer-in-Charge has certified that all effects notified by the Engineer to the Contractor before the end of this period have been corrected.

48.4 On completion of the whole work under the Contract, the Contractor may substitute retention money with an 'on demand' Bank guarantee.

49 Liquidated Damage/ Completion time Guarantee

49.1 The Contractor guarantees that it shall attain Completion of the whole of the work or each Milestone within the

Time for Completion or within such extended time to which the Contractor shall be entitled under GCC Clause 28.

49.2 The Contractor shall pay Liquidated Damage (LD) to the Department at the rate per week **stated in the Contract Data** for each week that the Completion Date is later than the Intended Completion Date (for the whole of the work or the milestones as stated in the Contract Data). The total amount of Liquidated Damage shall not exceed **the amount defined in the Contract Data**. The Department may deduct Liquidated Damage from payments due to the Contractor. Payment of Liquidated Damages does not affect the liabilities Contractor‟s. Liquidated damages shall in no event exceed the maximum amount. Once the Maximum is reached, the Department may consider termination of the Contract.

49.3 The amount of compensation may be adjusted or set-off against ny sum payable to the Contractor under this Contract. In case, the contractor does not achieve a particular milestone or the re-scheduled milestone(s), the amount shown against that milestone shall be withheld, to be adjusted against the compensation levied at the final grant of Extension of Time. Withholding of this amount on failure to achieve a milestone, shall be automatic without any notice to the contractor. However, if the contractor catches up with the progress of work on the subsequent milestone(s), the withheld amount shall be released. In case the contractor fails to make up for the delay in subsequent milestone(s), amount mentioned against each milestone missed subsequently also shall be withheld. However, no interest, whatsoever, shall be payable on such withheld amount.

49.4 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 the 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.

50 Incentives or Bonus (Optional)

50.1 **If specified in the Contract Data,** for early completion of the contract before the stipulated date of completion, an incentive amount at the rate of half per cent (½%) of the contract price per week of early completion, subject to a maximum of five per cent (5%) of the contract price may be paid to the contractor.

For the purpose of calculating bonus payment, the time given in the Bid for completion of the whole of the works is fixed and unless otherwise agreed, no adjustment of the time by reason of granting the extension of time pursuance to Clause 28 or any other Clause of these conditions will be allowed. Any period falling short of a complete month shall be ignored for the purpose of computing the period relevant for the payment of bonus.

51 Advance Payments

51.1 The Department shall make the advance payments to the Contractor of the a**mounts stated in the Contract Data** by the Dates stated in the Contract Data, against provision by the Contractor of an Unconditional Bank Guarantee in the form and by the Bank acceptable to the Department in amounts and currencies equal to the Advance Payments. The guarantee shall remain effective until the advance payment has been repaid, but the amount of the guarantee shall be progressively reduced by the amount repaid by the contractor.

51.2 The Contractor is to use the advance payment only to pay for equipment, plant and mobilization expenses required specifically for execution of the works. The contractor shall demonstrate that advance payment has been used in this way by supplying copies of invoices or other documents to the Engineer-in-charge.

51.3 The advance payment shall be repaid by deducting proportionate amount from payments due to the contractor, following the scheduled of completed percentages of the works on a payment basis. No account shall be taken of the advance payment or its repayment in assessing valuation of work done, variations, price adjustment,

compensation events, or liquidated damages.

51.4 **Secured Advance:**
The Engineer-in-Charge may make advance payment in respect of materials and plant brought to site but not yet incorporated installed in the Works **in accordance with conditions stipulated in the Contract Data.**

52. Securities

52.1 Security deposit shall consist of two parts -

a) Performance security to be submitted at award of the work
b) Retention Money to be recovered from Running Bills.

52.2 The Performance Security (including additional Security for unbalanced bids) shall be provided to the Employer not later than the **date specific in the Letter of Acceptance/Contract Data** and shall be issued in an amount and form and by a bank or surety acceptable to the Department, and denominated in Indian Rupees. The Performance Security shall be valid until a date 28 days from the date of expiry of Defects Liability Period and the additional security for unbalanced Bids shall be valid until a date 28 days from the date of issue of the certificate of completion.

53 BLANK

54 Cost of Repairs

54.1 Loss or Damage to the Works or Materials to be incorporated in the Works between the Start Date and the Defects Correction periods shall be remedied by the damage arises from the Contract's cost if the loss or damage arise from the Contractor's acts or omission.

E. FINISHING THE CONTRACT.

55. Completion

55.1 After completion of the work, the contractor will serve a written notice to the Engineer-in-Charge of such completion of work. The Engineer-in-Charge, upon receipt of this notice shall conduct a complete joint survey of the work within 7 days and prepare a defects list jointly. The defects pointed out by the Engineer-in-Charge would be rectified by the contractor within 14 days and thereafter acceptance report be signed jointly by the contractor and the PHE Department. This joint acceptance report shall be treated as, 'Completion Certificate'

55 Taking Over

55.1 The Department shall take over the Site and the Works within 7 (seven) days of the Engineer-in-Charge issuing a certificate of Completion.

57 **Final Account**

57.1 The Contractor shall supply to the Engineer-in-Charge detailed account of the total amount that the Contractor considers payable under the Contract before the end of the Defects Liability Period. The Engineer-in-Charge shall issue a Defects Liability Certificate and certify any final payment that is due to the Contractor within 60 days of receiving the Contractor's account if it is correct and complete. If it is not, the Engineer-in-Charge shall issue within 15 days a schedule that states the scope of the corrections or additions that are necessary for the correction and certify payment of 50% of the undisputed amount to the contractor. If the Final Account is still unsatisfactory after it has been resubmitted the Engineer-in-Charge or his nominee shall decide on the amount payable to the Contractor and issue a payment certificate, within 60 days of receiving the Contractor's revised account.

58. As Built Drawings and Operation and Maintenance Manuals

58.1 If As built 'Drawings' and 'Operation and Maintenance manuals' are required, the Contractor shall supply them by the **dates stated in the Contract Data.**

58.2 If the Contractor does not supply the Drawings and/or manuals by the dates stated in the Contract Data, or they do not receive the Engineer-in-Charge's approval, the Engineer-**in-Charge shall withhold the amount stated in the Contract Data** from payments due to the Contractor.

59 **Termination**

59.1 The Department or the Contractor may terminate the Contract if the other Party causes a fundamental breach of the Contract.

59.2 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 Program and the stoppage has not been authorized by the Engineer-in-Charge;
(b) The Nodal Officer or his nominee 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 becomes bankrupt or goes into liquidation other than for a reconstruction restructure or amalgamation.
(d) Payment certified by the Engineer-in-Charge is not paid by the Employer to the Contractor within 50 days of the date of the Engineer-in-Charge's certificate.
(e) the Engineer-in-Charge 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-in-Charge.
(f) the Contractor does not maintain a security which is required.
(g) the Contractor has delayed the completion of works by the number 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 the executing the Contract.
i) if the contractor has contravened clause 7.1 and clause 9.00

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 Employer, and includes collusive practice. Bidders (prior to or after bid submission) designed to establish bid prices at artificial non-competitive levels and to deprive the Employer of the benefits of free and open competition.

59.3 When either party to the Contract gives notice of a breach of contract to the Nodal Officer or his nominee for a cause other than those listed under Sub-Clause 59.2 above, the Nodal Officer or his nominee shall decide whether the breach is fundamental or not.

59.4 Notwithstanding the above, the Employer may terminate the Contract for convenience subject to payment of compensation to the contractor including loss of profit on uncompleted works. Loss of profit shall be calculated on the same basis as adopted for calculation of extra/additional items.

59.5 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.

60. Payment upon Termination

60.1 If the Contract is terminated because of a fundamental breach of Contract by the Contractor, the Engineer-in-Charge shall issue a certificate for the value of the work done less advance payments received up to the date of the 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 Liquidated 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.

60.2 If the Contract is terminated at the Employer's convenience or because of a fundamental breach of Contract by the Employer, the Engineer-in-Charge shall issue a certificate for the value of work done, the reasonable cost of removal of Equipment, repatriation of the Contractors personnels employed solely on the Works, and the Contractor's costs of Works protecting and loss of profit a on uncompleted works 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

60.3 If the Contract is terminated at fundamental the breach Employer of Contract by the Employer, the Engineer-in-Charge shall issue a certificate for the value of the work

61. Property.

61.1 All materials on the Site, Plant, Equipment, Temporary Works and Works for which payment has been made to the contractor by the Employer, are deemed to be the property of the Employer, if the Contract is terminated because of a Contractor's default.'

62. Release from Performance.

62.1 If the Contract is frustrated by the outbreak of war or by other event entirely outside the control of either the Employer or the Contractor, the Engineer-in-Charge shall certify that the Contract has been frustrated. The Contractor shall leave the Site 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.***)***

F. ADDITIONAL CONDITIONS OF CONTRACT (ACC)

In addition to all other Conditions under this Contract, the following Additional Conditions (ACC) shall also apply in the cases of items of work requiring Design, Supply, Installation, Commissioning of Plant and Machineries **indicated in the Annexure - I to Contract Data:**

1. Definitions:

i. **"Completion**" means that the Facilities (or a sp specified in the Contract) have been completed operationally and structurally and put in a tight

and clean condition, that all work in respect of Pre-commissioning of the Facilities or such specific part thereof has been completed, and that the Facilities or specific part thereof are ready for Commissioning as provided in **ACC Clause 7 (Completion of facilities)** hereof.

ii. **"Commissioning"**means operation of the Facilities or any part thereof by the Contractor following Completion, which operation is to be carried out by the Contractor as provided **in ACC Clause 8 (Commissioning)** hereof, for the purpose of carrying out Guarantee Test(s).

iii. **"Pre-commissioning"** means the testing, checking and other requirements specified in this Contract that are to be carried out by the Contractor in preparation for Commissioning as provided in **ACC Sub-Clause 7.2(Completion of the Facilities)** hereof.

iv. **"Guarantee** mean **Test(s)"**the test(s) specified in the to ascertain whether the Facilities or a specified part thereof is able to attain the Functional Guarantees specified in the Appendix to the Contract Agreement for ancillary the Facilities, titled Functional Guarantees, in accordance with the provisions of **ACC Sub-Clause 9.1 (Guarantee Test)** hereof.

v. "**Installation Services**" means those services of the Plant to be provided by the Contractor under the Contract, such as transportation and provision of marine or other similar insurance, inspection, expediting, site preparation works (including the provision and use of Contractor's Equipment and the supply of all construction materials required), installation, testing, pre-commissioning, commissioning, operations, maintenance, the provision of operations and maintenance manuals, training, etc. as the case may require.

vi. **"Operational** means **Acceptance"** the acceptance by the Employer of the Facilities (or any part of the Facilities where the Contract provides for acceptance of the Facilities in parts), which certifies the Contractor's fulfillment of the contract in respect of Functional Guaranties of the Facilities (or the relevant part thereof) in accordance with the provisions of **ACC Clause 13 (Functional Guarantees)** hereof and shall include deemed acceptance in accordance with ACC Sub-Clause 10.4(Commissioning and Operational Acceptance) hereof and shall included acceptance in accordance with ACC Sub-Clause 10.4 (Commissioning and Operational Acceptance) hereof.

vii. **"Defect Liability** means the period **Period"** of validity of the warranties given by the Contractor commencing at Completion of the Facilities or a part thereof, during which the Contractor is responsible for defects with respect to the Facilities (or the relevant part thereof) as provided in GCC Clause 35.1 (Defect Liability.

viii. "**Facilities**" means the Plant to be supplied and installed, as well as all the Installation Service to be carried out by the Contractor under the Contract.

viii. **"Plant "**means permanent plant, equipment, machinery, apparatus, materials, articles and things of all kinds to be provided and incorporated in the Facilities by the Contractor under the Contract but does not include Contractor's Equipment.

2. **General:**

2.1 Unless otherwise expressly limited in this Contract, the Contractor's Supply (including obligations procurement, quality assurance, construction, installation, associated civil works, Pre-commissioning and delivery) of the Plant, and the installation, completion and commissioning of the Facilities in accordance with the plans, procedures, specifications, drawings, codes and any other documents as specified in the Contract. Such specifications include, but are not limited to, the provision of supervision and engineering services; the supply of labor, materials, equipment, spare parts and accessories; Contractor's Equipment; construction utilities and supplies, temporary materials, structures and facilities; transportation (including, without limitation, unloading and hauling to, from and at the Site); and storage, except for those supplies, works and services that will be provided or performed by the Department.

2.2 The Contractor shall, unless specifically excluded in this Contract, perform all such work and/or supply all such items and materials not specifically mentioned in the Contract but that can be reasonably inferred from the Contract as being required for attaining Completion of the Facilities as if such work and/or items and materials were expressly mentioned in the Contract.

3. **Design and Engineering:**

3.1 The Contractor shall execute the basic and detailed design, drawings and the engineering work in compliance with the provisions of the Contract, or where not so specified, in accordance with good engineering practice.

When completed, the Facilities should be fit for the purposes for which they are intended as defined in the Contract. The Contractor shall be responsible for any discrepancies, errors or omissions in the specifications, drawings and other technical documents that it has prepared, provided that such discrepancies, errors or omissions are not because of inaccurate information furnished in writing to the Contractor by or on behalf of the Department.

No part of the Works requiring approval should commence without Engineer-in-Charge's approval thereof.

3.2 All necessary General Arrangement Drawings and other Engineering Drawings with design calculations should be submitted within a **period specified in the Contract Data** for approval of the Department. Within 21 (twenty one) days after receipt of any document, the Engineer-in-Charge shall either return one copy thereof to the Contractor with its approval endorsed thereon or shall notify the Contractor in writing of its disapproval along with the reasons thereof and the modifications that the Engineer-in-Charge proposes.

If the Engineer-in-Charge fails to take such action within the said 21 (twenty one) days, then the said document shall be deemed to have been approved.

3.3 The Engineer-in-Charge shall not disapprove any document, except on the grounds that the document does not comply with the Contract or that it is contrary to good engineering practices.

3.4 If the Engineer-in-Charge disapproves the document, the Contractor shall modify the document and resubmit it for approval**.** If the Engineer-in-Charge approves the document subject to modification(s), the Contractor shall make the required modification(s), whereupon the document shall be deemed to have been approved.

3.5 The Contractor shall not depart from any approved document unless the Contractor has first submitted to the Engineer-in-Charge an amended document and obtained the Engineer-in-Charge's approval thereof. The Engineer-in-Charge may request any changes in any already approved document and/or in any document based thereon which must be communicated in writing.

3.6 The Contractor shall be entitled to disclaim responsibility for any design, data, drawing, specification or other document, or any modification thereof provided or designated by or on behalf of the Department, by giving a notice of such disclaimer to the Engineer-in-Charge.

4. **Procurement of Plants and Machineries:**

4.1 The Contractor shall procure all Plants and Machineries in an expeditious and orderly manner to the Site.

4.2 The Contractor shall at its own risk and expense transport all the materials to the Site by the mode of transport that the Contractor judges most suitable under all the circumstances. Unless otherwise provided in the Contract, the Contractor shall be entitled to select any safe mode of transport operated by any person to carry the materials and the Contractor's Equipment

4.3 Upon dispatch of each shipment of materials, the Contractor shall notify the Department of the description of the materials, the point and means of dispatch, and the estimated time of arrival at the Site. The Contractor shall furnish to the Department the relevant shipping documents.

4.4 The Contractor shall be responsible for obtaining, if necessary, approvals from the authorities for transportation of the materials to the Site. The Department shall use its best endeavors in a timely and expeditious manner to assist the Contractor in obtaining such approvals, if requested by the Contractor. The Contractor shall indemnify and hold harmless the Department from and against any claim for damage to roads, bridges or any other traffic facilities that may be caused by the transport of the materials and the Contractors Equipment to the site.

4.5 In case of plant procured and supplied by Department, the following provisions shall apply:

1) The Department shall, at its own risk and expense, transport each item to the place on or near the Site as agreed upon by the Parties and make such item available to the contractor at the time mutually agreed.

2) Upon receipt of such item, the Contractor shall inspect the same visually and notify the Engineer-in-Charge of any detected shortage, defect or default. The Department shall immediately remedy any shortage, defect or default, or the Contractor shall, if practicable and possible, at the request of the Department, remedy such shortage, defect or default at the Department's cost and expense.
After inspection, such item shall fall under the care, custody and control of the Contractor

3) The foregoing responsibilities of the Contractor and its obligations of care, custody and control shall not relieve the Department of liability for any undetected shortage, defect or default, nor place the Contractor under any liability for any such shortage, defect or default.

5 **Tests and Inspections:**

5.1 The Contractor shall, at his own expense, carry out at the place of manufacture/ or on the site all such tests and/or inspections of the Plant and any part of the Facilities**.**

5.2 The Engineer-in-Charge or designated representatives of the Department shall be entitled to attend the aforesaid test and/or inspection, provided that the Department shall bear all costs and expenses incurred in connection with such attendance including, but not limited to, all traveling and board and lodging expenses.

5.3 Whenever the Contractor is ready to carry out any such test/ or inspection, a reasonable advance notice of such test and/or inspection and the place and time thereof shall be informed to the Engineer-in-Charge. The Contractor shall obtain from any relevant third Party or manufacturer any necessary permission or consent to enable the Department's de inspection.

5.4 The Contractor shall provide the Engineer-in-Charge with a certified report/results of any such test and inspection. If the esentativesDepartment"sfailstoattendthetestdesignatedand/orinspection,or if rep it is agreed between the Parties that such persons shall not do so, then the Contractor may proceed with the test and/or inspection in the absence of such persons, and may provide the Engineer-in-Charge with a certified report of the results thereof.

5.5 If any Plant or any part of the Facilities fails to pass any test and/or inspection, the Contractor shall either rectify or replace such Plant or part of the Facilities and shall repeat the test and/or inspection**.**

5.6 The Contractor agrees that neither the execution of a test and/or inspection of Plant or any part of the Facilities, nor the attendance by the Department certificate pursuant to ACC Sub-Clause 5.4, shall release the Contractor from any other responsibilities under the Contract.

5.7 No part of the Facilities or foundations shall be covered up on the Site without the Contractor carrying out any test and/or inspection under the witness of the Engineer-in-Charge. The Contractor shall give a reasonable notice to the Engineer-in-Charge whenever any such parts of the Facilities or foundations are ready or about to be ready for test and/or inspection.

5.8 The Contractor shall uncover any part of the Facilities or foundations, or shall make openings in or through the same as the Engineer-in-Charge may require from time to time at the Site, and shall reinstate and make good such part or parts.

If any parts of the Facilities or foundations have been covered up at the Site after compliance with the requirement of ACC Sub-Clause 5.7 and are found to be executed in accordance with the Contract, the expenses of uncovering, making openings in or through, reinstating, and making good the same shall be borne by the Employer, and the Time for Completion shall be reasonably adjusted to the extent that the Contractor has thereby been delayed or impeded in the performance of any of its obligations under the Contract.

6. Installation:

6.1 **Bench Mark:** The Contractor shall be responsible for the true and proper setting-out of the Facilities in relation to bench marks, reference marks and lines provided to it in writing by or on behalf of the Department.

If, at any time during the progress of installation of the Facilities, should any error appear in the position, level or alignment of the Facilities, the Contractor shall forthwith rectify such error to the reasonable satisfaction of the Engineer-in-Charge. If such error is based on incorrect data provided in writing by or on behalf of the Department, the expense of rectifying the same shall be borne by the Department.

6.2 **Contractor's Supervision :**Contractor shall give or provide all necessary superintendence during the installation of the Facilities, and the Construction Manager or its deputy shall be constantly on the Site to provide full-time superintendence of the installation. The Contractor shall provide and employ only technical personnel who are skilled and experienced in their respective callings and supervisory staff who are competent to adequately supervise the work at hand.

7. Completion of the Facilities

7.1 As soon as the Facilities or any part thereof has, in the opinion of the Contractor, been completed operationally and structurally and put in tight and clean conditions, excluding minor items not materially affecting the operation or safety of the Facilities, the Contractor shall so notify the Department in writing.

7.2 Within 7 (seven) days after receipt of such notice from the Contractor under **ACC Sub-Clause 7.1** above, the Department shall provide the raw materials, utilities, lubricants, chemicals, catalysts, and other materials required for Pre-commissioning of the Facilities.

7.3 As soon as reasonably practicable after the raw materials, utilities, lubricants, chemicals, catalysts, and other matters have been provided by the Employer in accordance with ACC Sub-clause 7.2, the Contractor shall commence Pre-commissioning of the Facilities or the relevant part thereof in preparation for Commissioning subject to ACC Clause 12.

7.4 As soon as all works in respect of Pre-commissioning are completed and, in the opinion of the Contractor, the Facilities are ready for Commissioning, the Contractor shall so notify the Engineer-in-Charge in writing.

The Engineer-in-Charge, within fourteen (14) days under **ACC** after receipt of the Contactor's notice under ACC **Sub-Clause 7.4**, shall either issue a Completion Certificate, stating that the Facilities have reached Completion as of the date under ACC of Clause the7.4ornotifyContractor"sthein writing of any defects and/or deficiencies.

If the Engineer-in-Charge notifies the Contractor of any defects and/or deficiencies, the Contractor shall then correct such defects and/or deficiencies, and shall repeat the procedure of pre-commissioning as described in ACC Sub-clause 7.4 above.

If the Engineer-in-Charge is satisfied that the Facilities or that part thereof have reached Completion, the Engineer-in-Charge shall, within seven (7) days after receipt of the Contractor's notice Completion Certificate stating that the Facilities or that part thereof have reached Completion as of the date of the Contractor's repeated notice.

If the Project Manager is not so satisfied, then it shall notify the Contractor in writing of any defects and/or deficiencies within seven (7) days after procedure shall be repeated

7.6 If the Engineer-in-Charge fails to issue the Completion Certificate and fails to inform the Contractor of any defects and/or deficiencies within fourteen (14) days after receipt of the contractor's notice under ACC Sub-clause 7.4 or within seven (7) days after receipt ACC Sub-Clause 7.5or if the Department makes use of the Facilities or part thereof, then the Facilities or that part thereof shall be **deemed to have reached Completion** as of the date of notice or repeated notice, or as of the Department's use of the facilities, as the case may be.

7.7 The Contractor shall, as soon as possible, complete all outstanding minor items so that the Facilities are fully in accordance with the requirements of the Contract, failing which the Department will undertake such completion and deduct the costs thereof from any monies owing to the Contractor.

8. Commissioning

8.1 Commissioning of the Facilities or any part thereof shall be commenced by the Contractor immediately after issue of the Completion Certificate by the Engineer-in-Charge pursuant to ACC Sub-clause 7.5, or immediately after the date of the deemed Completion pursuant to ACC Sub-clause 7.6.

8.2 The Department shall supply all raw materials, utilities, lubricants, chemicals, catalysts, and other matters required for Commissioning.

8.3 The Contractor's and Department's and advisory personnel and S attend the Commissioning, including the Guarantee Test, and shall advise and assist the Department.

9. Guarantee Test

9.1 Subject to ACC Clause 12 below**, t**he Guarantee Test and repeats thereof shall be conducted by the Contractor during Commissioning of the Facilities or the relevant part thereof **within the time specified in the Contract Data** to ascertain whether the Facilities or the relevant part can attain the
Functional Guarantees specified in Annexure –II of Contract Data. The Department shall promptly provide the Contractor with such information as the Contractor may reasonably require in relation to the conduct and results of the Guarantee Test and any repeats thereof.

9.2 If for reasons attributable to the Department, the Guarantee Test of the Facilities or the relevant part thereof cannot be successfully completed within the period from the date of Completion **specified in Contract Data** or any other period agreed upon by the Department and the Contractor, the Contractor shall be deemed to have fulfilled its obligations with respect to the Functional Guarantees ACC Sub-clause 13 shall not apply.

10. Operational Acceptance

10.1 Subject to ACC Clause 11 below, Operational Acceptance shall occur in respect of the Facilities or any part thereof when;

i) the Guarantee Test has been successfully completed and the Functional Guarantees are met; or
ii) the Guarantee Test has not been successfully completed or has not been carried out for reasons not attributable to the Contractor within the period from the date of Completion specified in the Contract Data in pursuant to the ACC Sub-Clause 9.2 above.
iii) any minor items mentioned in ACC Sub-Clause 7.7 hereof relevant to the Facilities or that part thereof have been completed.

10.2 At any time after any of the events set out in **ACC Sub-Clause 10.1** have occurred, the Contractor may give a notice to the Engineer-in-Charge requesting the issue of an Operational Acceptance Certificate in respect of the Facilities or the part thereof specified in such notice as of the date of such notice.

10.3 The Engineer-in-Charge shall, within seven (7) days after receipt of the Contractors notice, issue an Operational Acceptance Certificate.

10.4 If within seven (7) days after receipt of the Contractor's notice, the Engineer-in-Charge fails to issue the Operational Acceptance Certificate or fails to inform the Contractor in writing of the justifiable reasons why the Engineer-in-Charge has not issued the Operational Acceptance Certificate, **the Facilities or the relevant part thereof shall be deemed to have been accepted** as of the date of the said notice.

11.0 **Partial Acceptance**

11.1 If the Contract specifies that Completion and Commissioning shall be carried out in respect of parts of the Facilities, the provisions relating to Completion and Commissioning including the Guarantee Test shall apply to each such part of the Facilities individually, and the Operational Acceptance Certificate shall be issued accordingly for each such part of the Facilities.

12. **Delayed Pre-commissioning and/or Guarantee Test**

12.1 In the event that the Contractor is unable to proceed with the Pre-commissioning of the Facilities **pursuant to the ACC Sub-Clause 7.2** or with the Guarantee Test **pursuant to ACC Sub-Clause 9.2,** for reasons

attributable to the Department either on account of non availability of other facilities under the responsibilities of other Contractor(s), or for reasons beyond the Departments control, the provisions leading to "deemed completion of activities such as Completion, pursuant to **ACC Clause 7**, and Operational Acceptance, pursuant to **ACC Clause 10**, and Contractor"s o Defect Liability Period, pursuant to **GCC Clause 35,** and Functional Guarantee, pursuant to ACC **Clause 13**, shall not apply. In this case, the followings shall apply:

12.2 When the Contractor is notified by the Engineer-in-Charge that he will be unable to proceed with the activities and obligations pursuant to the above ACC Sub-Clause 12.1, the Contractor shall be entitled to the following:

(a) the Time of Completion shall be extended for the period of suspension without imposition of liquidated damages pursuant to GCC Clause 49;

(b) payments due to the Contractor in accordance with the Contract, which would not have been payable in normal circumstances due to non-completion of the subject activities, shall be released to the Contractor against submission of a security in the form of a bank guarantee of equivalent amount acceptable to the Employer, and which shall become null and void when the Contractor will have complied with its obligations regarding those payments, subject to the provision of Sub-Clause 12.3 below;

(c) the expenses towards the above security and extension of other securities under the contract, of which validity needs to be extended, shall be reimbursed to the Contractor by the Employer;

12.3 In the event that the period of suspension under above Sub-Clause 12.1 actually exceeds one hundred eighty (180) days, the Employer and Contractor shall mutually agree to any additional compensation payable to the Contractor.

12.4 When the Contractor is notified by the Engineer-in-Charge that the plant is ready for Pre-commissioning, the Contractor shall proceed without delay in performing all the specified activities and obligations under the Contract.

13 **Guarantees and Liabilities**

13.1 Functional Guarantee

1) The Contractor guarantees that during the Guarantee Test, the Facilities and all parts thereof shall attain the **Functional Guarantees specified in the Annexure –II of Contract Data**, subject to and upon the conditions therein specified.

2) If, for reasons attributable to the Contractor, the minimum level of the Functional Guarantees **specified in the Annexure –II of Contract Data** is not met either in whole or in part, the Contractor shall at its cost and expense make such changes, modifications and/or additions to the Plant or any part thereof as may be necessary to meet at least the minimum level of such Guarantees. The Contractor shall notify the Department upon completion of the necessary changes, modifications and/or additions, and shall request the Department to repeat the Guarantee Test until the minimum level of the Guarantees has been met. If the Contractor eventually fails to meet the minimum level of Functional Guarantees, the Department may consider termination of the Contract.

3) If, for reasons attributable to the Contractor, the specified Functional Guarantees, are not attained either in whole or in part, the Contractor shall, at the Contractor's option, either

   (a) make such changes, modifications and/or additions to the Facilities or any part thereof that are necessary to attain the Functional Guarantees at its cost and expense, and shall request the Department to repeat the Guarantee Test or

   (b) pay liquidated damages to the Department in respect of the failure to meet the Functional Guarantees in accordance with the provisions in the Contract.

14. **Payments to Contractor**

The Employer shall pay the Contractor in the following manner and at the following times, on the basis of the Price Breakdown given in the Bill of Quantities.

<u>Schedule No. 1 –Plant and Equipment Supplied and Installed</u>

Sixty percent (60%) of the cost of Plant & Equipment amount upon delivery to the Site within forty-five (45) days after receipt of invoice and documents.

Thirty percent (30%) of the cost of Plant & Equipment upon issue of the Completion Certificate, within forty-five (45) days after receipt of bill.

Ten percent (10%) of the cost of Plant & Equipment amount upon issue of the Operational Acceptance Certificate, within forty-five (45) days after receipt of bill.

Schedule No. 2. Installation Services (Not Applicable for this Work)

Not applicable for this work

G. SPECIAL CONDITIONS OF CONTRACT

1. LABOUR

The Contractor shall, unless otherwise stated in the Contract, shall make his own arrangements for the engagement of all staff and labor, local or other, and for their payment, housing, feeding and transport. *The Contractor is encouraged to use local labor that has the necessary skills.*

The Contractor shall, if required by the Engineer-in-Charge, deliver to the Engineer-in-Charge a return in detail, in such form and at such intervals as the Engineer-in-Charge may prescribe, 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 Nodal Officer or his nominee may require.

2. COMPLIANCE WITH LABOUR REGULATIONS:

During continuance of the contract, the Contractor and his sub contractors shall abide at all times by all existing labour enactment and rules made there under, regulations, notifications and bye laws of the State or Central Government or local authority and any other labor 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 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 PHE Department indemnified in case any action is taken against the PHE

Department 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 PHE Department 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-in-Charge or his nominee/PHE Department shall have the right to deduct any money due to the Contractor including his amount of performance security. The PHE Department/Engineer-in-Charge or his nominee 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 PHE Department.

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

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

1. **Workmen Compensation Act 1923:-** The Act provides for compensation in case of injury by accident arising out of and during the course of employment.

2. **Payment of Gratuity Act 1972:** Gratuity is payable to an employee under the Act on satisfaction of certain conditions on separation if an employee has completed 5 years service or more on death at the rate of 15 days wages for every completed year of service. The Act is applicable to all establishments employing 10 or more employees.
3. **Employees P.F and Miscellaneous Provision Act 1952:** The Act Provides for monthly contributions by the employer plus workers @ 12%/8.33%. The benefits payable under the Act are:
   (i) Pension to 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 workmen/ 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 labor.

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 employment.

(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 promotions 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 upto Rs. 3500/- per month shall be worked out by taking wages as 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 situations a strike or lockout becomes illegal and what are the requirements for laying off or retrenching the employees or closing down the est (Standing Orders) Act 1946:- It is applicable to all establishments employing 100 or more workmen (employment size reduced by some of the States and Central Government to 50). The provides for laying down rules governing the conditions of employment by the Employer on matters provided in the Act and get same certified by the designated Authority. Trade Unions Act 1926:- The Act lays down the procedure for registration of trade union of workmen and employers. The Trade Union 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 Labor is prohibited in Building and Construction Industry.

n) **Inter-State Migrant workmen"s (Regulation of - Empl**
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 establishment to which this Act becomes applicable, are required to be provided certain facilities such as housing, medical aid, travelling expenses from home upon 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 accommodations 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 at plans before setting up a factory, health and safety provisions, welfare provisions, working hours, annual earned leave and rendering information regarding accidents or dangerous occurrences to designated authorities. It is applicable to premises employing 10 persons or more with aid of power or 20 more persons without the aid of power engaged in manufacturing process.

3. ARBITRATION (GCC Clause 25.2)

Any disputes in respect of contract not amica decision, shall be decided by arbitration as set forth below:

i) In case of Dispute or difference arising between the Department and the Contractor relating to any matter arising out of or connected with this agreement, such disputes or difference shall be settled in accordance with the Indian Arbitration and Conciliation Act, 1996. The Parties shall make efforts to agree on a sole Arbitrator and only if such an attempt does not succeed and the Arbitral Tribunal consisting of 3 arbitrators one each to be appointed by the Employer and the Contractor and the third arbitrator to be chosen by the two arbitrators so appointed by the Parties to act as Presiding Arbitrator shall be considered. In case of failure of the two arbitrators appointed by the parties to reach upon a consensus within a period of 30 days from the appointment of the Arbitrator appointed subsequently, the Presiding Arbitrator shall be appointed by the Council.

ii) The Arbitral Tribunal shall consist of 3 arbitrators, one each to be appointed by the PHE Department and the Contractor. The third arbitrator shall be chosen by the two Arbitrators so appointed by the Parties to act as Presiding Arbitrator. In case of failure of the two arbitrators appointed by the parties to reach upon a consensus within a period of 30 days from the appointment of the Arbitrator appointed subsequently, the Presiding Arbitrator shall be appointed by the Council.

iii) If one of the parties fails to appoint its arbitrators in pursuance of sub-clause [i] and [ii] above within 30 days after receipt of the notice of the appointment of its arbitrator by the other party, then the Council, shall appoint arbitrator. A certified copy of the order of the Council, making such an appointment shall be furnished to both the parties.

iv) Arbitration proceedings shall be held at Aizawl, and the language of the arbitration proceedings and that of all documents and communications between the parties shall be 'English'.

v) The decision of the majority of arbitrators shall be final and binding upon both parties. The cost and expenses of Arbitration Proceedings shall be paid as determined by the Arbitral Tribunal. However, the expenses incurred by each party in connection with the preparation, presentation, etc. of its proceedings as also the fees and expenses paid to the arbitrator appointed by such Party or on its behalf shall be borne by each party itself.

vii) Performance under the contract shall continue during the arbitration proceedings and payments due to the contractor by the Department shall not be withheld, unless they are subject matter of the arbitration proceedings.