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TERMS AND CONDITIONS OF CONTRACT

(A) General condition of contract

1.0 DEFINITIONS

In the Contract, as herein after defined, the following word/ expressions shall have the meanings hereby assigned to them, except where the context requires otherwise.

- a) **"Approval or Approved"** means approval in writing including subsequent written confirmation of previous verbal approval.
- b) **"Bill of Quantities (BOQ)"** means list of items of work, their quantities and rates.
- c) **"Client or Employer"** means DIMTS LIMITED and shall include its heirs, executors, legal representatives etc.
- d) **"Contract"** shall mean and include the Agreement or Letter of Acceptance/work order, the accepted Bill of Quantities and Rates, the Terms and Conditions (General Condition of Contract, Special Conditions of Contract, Appendix to terms & conditions, and Notice inviting Quotations, Drawings, Specifications and other bidding Documents.
- e) **"Contract Value"** means the sum stated in the letter of Acceptance/Contract Agreement/ work order.
- f) **"Contractor"** means the individual, firm, Company, Corporation, who enters into the Contract with the Employer, and shall include its heirs, executors, administrators, successors, legal representatives, as the case may be.
- g) **"Contractor's Representative"** shall mean the person responsible for execution of the contract who shall be so declared by the Contractor and who shall be authorized under a duly executed power of attorney to comply the instructions and to use, receive materials issued by the Employer to the Contractor for works. He shall be capable of taking responsibility for proper execution of works.
- h) **"Construction Plant"** means all machinery, appliances or things of whatsoever nature required for the execution and completion of the works, but do not include material or other things intended to form or forming part of the permanent works.
- i) **"Day"** means the calendar day.
- j) **"Defect Liability Period"** means the specified period of defects liability from the date of issue of completion certificate by the Engineer.
- k) **"Drawings"** means the Drawings annexed to the Contract or referred in it and shall include any modifications of such Drawings and further Drawings as may be issued or approved by the Engineer.
- l) **Deleted**

- m) "**Engineer or Engineer in Charge**" means the Project Head of DIMTS Ltd. (Employer) or any other officer authorised by the Employer to act on his behalf and for the purpose of operating the Contract.
- n) "**Engineer's Representative**" means any official nominated from time to time by the Engineer to act on its behalf.
- o) "**Letter of Acceptance / work order**" means the letter from the Employer or the Engineer to the Contractor, conveying acceptance of the Quotation.
- p) "**Material/s**" means all equipment, components, fittings and other materials including raw materials, which form part of the permanent works.
- q) "**Month**" means the calendar month
- r) "**Other Contractors**" means the individual, firm, Company, Corporation, Joint Venture or Consortium employed by or having a contract directly or indirectly with the Client/Employer/Engineer other than the Contractor.
- s) "**Permanent Work(s)/ Work(s)**" means the works (other than temporary works) to be executed in accordance with the Contract or part/s thereof as the case may be and shall include extra or additional, altered or substituted items of work as required for performance of the Contract.
- t) "**Rupees**" (or INR in abbreviation) shall mean Rupees in Indian currency.
- u) "**Sub-Contractor**" means the individual, firm, Company, Corporation, Joint Venture or Consortium, having direct contract with the Contractor and to whom any part of the work has been sublet by the Contractor and shall include its heirs, its executors, administrators, successors, legal representatives, as the case may be.
- v) "**Specifications**" means the specifications referred to in the Contract and any modification thereof or addition thereto, or as may from time to time be furnished or approved in writing by the Engineer.
- w) "**Scheduled Bank**" means a bank included in the second schedule to the Reserve Bank of India Act, 1934, or modification thereto.
- x) "**Site**" means the land and/or other places on, under, in or through which the works are to be carried out, and any other lands or places provided by the Client/Employer/Engineer for the purpose of the Contract.
- y) "**Tenderer or Bidder**" means the individual, firm, Company, Corporation submitting a bid/quotation.
- z) "**Quotation or Tender or Bid**" means the offer (Technical and/or Financial) made by individual, firm, Company, corporation for the execution of the works.
- aa) "**Temporary Works**" means all enabling works of every kind required for the execution of the works.
- bb) "**Test**" means such tests as prescribed in the Contract or by the Engineer or Engineer's Representatives, whether performed by the Contractor or by the

Engineer or Engineer's Representative, or any agency approved by the Engineer.

- cc) "Time" expressed by hours of the clock shall be according to the Indian Standard time.

2.0 HEADING AND MARGINAL NOTES

- 2.1 The top heading and marginal notes given in the tender or Contract documents are solely for the purpose of facilitating reference and shall not be deemed to be part thereof and shall not be taken into consideration in the interpretation or consideration thereof.

2.2 Notices, consents, Approvals, Certificates and Determination.

Wherever in the Contract provision is made for giving or issue of any notice, consent, approval certificate or determination, it shall be in writing and the words notify, certify or determine shall be construed accordingly.

3.0 SINGULAR, PLURAL AND GENERAL

Words importing the singular only also include the plural and vice versa where the context requires. Similarly, words importing masculine gender also include the feminine gender.

4.0 COMMUNICATION AND LANGUAGE OF CONTRACT

4.1 Communication to be in writing

All notices, communications, references and complaints by either party to the Contract shall be in writing in English. Communication from only authorised representative of the Employer/ Contractor shall be entertained.

4.2 Language of Contract

The Contract document shall be drawn up in English.

5.0 LAWS GOVERNING THE CONTRACT

The Contract shall be governed by the laws in force in India.

6.0 INSPECTION OF SITE AND SITE DATA:

- i. The Employer/Engineer shall make available with Bid Documents such data on hydrological and sub-surface conditions, if any, obtained from investigations undertaken relevant to the works. However any such information/Data provided is merely for guidance only. The Contractor is advised to make his own independent assessment and shall at all times be responsible for use/ interpretation of all such data.
- ii. The Contractor shall be deemed to have inspected and examined the site and information available in connection therewith and to have satisfied himself fully before submitting his bid about the sub-surface conditions, the hydrological and climatic conditions, the extent and nature of work and materials necessary for the completion of the works, the means of access to

the site and accommodation he may require. He shall also be deemed to have obtained all necessary information regarding risks, contingencies and all other circumstances which may influence or affect the Contract.

7.0 CONTRACTOR'S UNDERSTANDING

The Contractor shall be deemed to have satisfied himself, before quoting, as to the correctness and sufficiency of his Quotation for the works and of the rates and prices stated in the Bill of Quantities, all of which shall except in so far as it is otherwise provided in the Contract, cover all his obligations under the Contract and all matters and things necessary for the proper execution, completion and maintenance of works.

8.0 PERFORMANCE SECURITY & RETENTION MONEY

8.1 Deleted

8.2 Performance Security:

- i. Within 5 days of issue of the Letter of Acceptance/ work order from the Employer / Engineer, the successful tenderer shall furnish to Employer/Engineer a Performance Security in the form of Demand Draft of any Nationalized/ Scheduled Indian Bank Payable at New Delhi in favour of DIMTS Ltd. or in the form of Government Securities or Fixed Deposit Receipts of any Nationalized bank duly pledged in favour of DIMTS Ltd. or in the form of bank guarantee from any Nationalized Indian Bank/any RBI approved Scheduled Indian Bank in the Performance annexed as Annexure-II (terms and condition (A) GCC) from any Scheduled Bank for an amount of 5% (Five percent) of the Contract Value and shall be valid till 60 days beyond the stipulated date of completion.

The Bank Guarantee shall be operative till the same is approved for discharge by the Employer/Engineer on satisfactory completion of works.

- ii. No payment under the Contract shall be made to the Contractor before receipt of performance security.
- iii. Failure of the successful tenderer to furnish the required performance security shall be a ground for the annulment of the award of the Contract and forfeiture of the Earnest Money Deposit.

8.3 Retention Money:

- i) Retention money for Contract shall be recovered from each running/on account bills of the Contractor @ 10 % of gross value of each bill after adjusting EMD amount till the amount so recovered including EMD amount adds up to 5% of the Contract Value of the work.
- ii) No interest shall be payable to the Contractor on the amount retained in cash towards retention money.

8.4 Release of Performance Security:

The whole of the Performance Security shall be liable to be forfeited by the Employer/Engineer at the discretion of the Employer/Engineer, in the event of any breach of contract on the part of the Contractor or if the Contractor fails to perform. On due and faithful completion of the entire work, the Performance Security shall be returned to the Contractor, subject to the issue of completion certificate by the Engineer in accordance with clause 65 of these conditions. This shall not relieve the Contractor from his obligations and liabilities, to make good any failures, defects, imperfections, shrinkages, or faults that may be detected during the defect liability period specified in the Contract.

8.5 Release of Retention Money:

- i) 100% of the retention money (equivalent to 2.5% of contract value shall be released after expiry of defects liability period specified in the contract. The retention money shall only be released after rectification of compliance of all Shortfalls in Deliverables, Designs all defects, imperfections, omissions. All the deficiencies are rectified by the Contractor to the satisfaction of the Engineer and Defect Liability certificate is issued by the Engineer.
- ii) If requested by the Contractor, 50% of the Retention money may be released on satisfactory completion of works against submission of Bank Guarantee for an equivalent amount by the Contractor in the Performa annexed as Annexure-III from any scheduled Bank. This Bank Guarantee shall be kept valid till the period of two months beyond the expiry of Defect Liability Period. Fixed Deposit Receipt (FDR) from a scheduled bank endorsed in favour of the Employer can be submitted by the Contractor in lieu of the Bank Guarantee for release of 50% Retention Money.

Where different defect liability periods are applicable to different parts of the works, the expression - "expiration of the defect liability period" shall for the purpose of this clause be deemed to mean the expiry of last of such periods

9.0 INSURANCE

- 9.1** The Contractor shall obtain necessary insurances in the joint name with the Employer, at his own cost as per the requirement. He may be required to take necessary add on covers if specified elsewhere in the contract or as may be instructed by the Employer/Engineer.
- 9.2** Before commencing of works, it shall be obligatory for the Contractor to obtain, at his own cost, insurance cover in the joint name of Employer & Contractor from reputed companies under the following requirements:
 - a) Third Party Liability Insurance i.e. Liability for death of or injury to any person or loss of or damage to any property (other than the work) arising

out the performance of the Contract: Such insurance shall be at least for an amount of Rs. 5.00 lakhs for any one incident with number of incidents unlimited.

- b) Contractor's All Risk Policy: The coverage under this policy shall be for the full contract value.
- c) Workmen Compensation Policy: Every single employee and worker employed in connection with the work shall be covered under this policy as per the provisions of workmen compensation Act and other applicable laws.
- d) Any other insurance cover as may be required by the law of the land.

The Contractor shall take out the above-mentioned insurance policies within 2 days of the issue of letter of acceptance and submit copies of the same to the Employer/Engineer-in-Charge as the commencement of work at project site can only be started after further submission of the same to DIMTS. The Contractor shall be fully responsible for any delay in this regard. The Contractor shall, whenever, called upon, produce to the Engineer or his representative the evidence of payment of premiums paid by him to ensure that the policies indeed continue to be in force.

The Contractor shall also obtain any additional insurance cover as per the requirements of the Contract.

The Employer/Engineer shall not be liable for or in respect of any damages or compensation payable to any workman or other person in the employment of the Contractor or his sub-contractor or petty contractor. The Contractor shall indemnify and keep indemnified the Employer/Engineer against all such damages and compensation.

The Policies of the Contractor shall remain in force through-out the period of execution of the works.

If the Contractor fails to effect or keep in force or provide adequate cover as acceptable to the Engineer in the insurance policies mentioned above, then in such cases, the Engineer may affect and keep in force any such insurance or further insurance on behalf of the Contractor. The recovery shall be made at the rate of 1.5 times the premium/premiums paid by the Contractor in this regard from the payment due to the Contractor or from the Contractor's Performance Security. However, the Contractor shall not be absolved from his responsibility and/or liability in this regard.

10.0 COMMUNICATION BETWEEN EMPLOYER/ENGINEER AND CONTRACTOR

10.1 Instructions in writing

Instructions given by the Engineer shall be in writing, provided that if for any reason the Engineer considers it necessary to give any instructions orally, the Contractor shall comply with such instructions. Confirmation in writing of such oral instruction given by the Engineer, whether before or after carrying out of

the instructions shall be deemed to be instructions within the meaning of this sub-clause.

The Contractor shall also be bound to carry out any instructions issued by Client as confirmed in writing by the Engineer.

10.2 All certificates, notices, written orders or letters, to be given by the Employer or the Engineer to the Contractor, shall be deemed to have been served, if the same are delivered to the Contractor or his authorized representative, or delivered or left at or posted to the given address of the Contractor or Contractor's registered office or principal place of business. Such documents shall be deemed to have been received on the day they are left or delivered, or in the case of postal transmission, on the day they would ordinarily have reached but not exceeding 7 days from the date of posting inclusive of day of posting, in any case.

10.3 Notices to Employer and Engineer

All notices to be given to the Employer or to the Engineer, under the terms of the contract, shall be served by sending by Speed/Registered post or by delivering the same, to the respective nominated addresses.

10.4 Change of Address

Either party may change the nominated address by prior written notice to the other party.

10.5 Change in constitution of Firm

In case of any change in the constitution of Contractor's firm, the same shall forthwith be notified by the Contractor to the Engineer / Employer.

11 DUTIES OF ENGINEER AND ENGINEER'S REPRESENTATIVE

11.1 Duties and Authority of Engineer

The Engineer or his authorized representative shall have the right to carry out the duties specified or implied in the Contract including issue of instructions, decisions, certificates and orders, as are specified in the contract, or necessary for the observance/administration of the Contract and expeditious and timely completion of the work.

- (a) If the Engineer-in-Charge is required, under, the terms of his appointment by the Employer, to obtain the specific approval of the Employer before exercising any such authority, particulars of such requirements are set out in the Special Conditions. Provided further that any requisite approval shall be deemed to have been given by the Employer for any such authority exercised by the Engineer-in-Charge.
- (b) Except as expressly stated in the Contract, the Engineer-in-Charge shall have no authority to relieve the Contractor of any of his obligations under the Contract.

12 GENERAL OBLIGATIONS OF THE CONTRACTOR

12.1 General Responsibility of the Contractor

The Contractor shall comply with the provisions of the Contract with due care and diligence design (to the extent provided for in the Contract), execute, complete the works and remedy the defects in accordance with the provisions of the Contract. The Contractor shall provide all superintendence, labour, materials, plant, & Equipment and all other things, whether of a temporary or permanent nature, required in and for such design, execution, completion and maintenance of works and rectification of any defects, as directed by the Engineer or his Representative.

12.2 Site Operations and Methods of Construction:

The Contractor shall take full responsibility for the adequacy, stability and safety of all site operations and method of construction. Where the Contract expressly provides that part of the Permanent Works shall be designed by the Contractor, he shall be fully responsible for that part of such works, notwithstanding any approval by the Engineer.

12.3 Appraisal of Errors / Omissions in the Drawings:

The Contractor shall promptly inform in writing to the Engineer of any error, omission, fault and other defects, in the design, drawings or specifications for the works which are noticed while reviewing the Contract documents or in the process of execution of the works.

12.4 Compliance with Regulations and Bye-laws:

The Contractor shall comply with the statutory provisions relating to the works, regulations and by-laws of any local authority and undertaking, including those controlling the utilities such as water supply, sewerage, telephones, power supply, etc., in whose jurisdiction the work is to be executed. The Contractor shall be bound to give all notices required by statute, regulations or bye-laws, as aforesaid. It shall be the responsibility of the Contractor to arrange all necessary clearances and approvals from the concerned authorities or undertakings before the work is taken up. However, assistance, if any, may be provided by Engineer/Employer/Client.

12.5 Contract Agreement:

The Contractor shall enter into and execute the Contract agreement in the form of agreement (Annexure-I) within 21 days from the date of issue of Letter of Acceptance/ work order unless otherwise agreed by the Employer. Two sets of stamp papers of the requisite value (INR 100/-) as per the prevailing laws shall be provided by the Contractor at his own cost. One set of agreement shall be retained by the Employer/ Engineer and the other set of the agreement shall be made available to the Contractor.

12.6 Contractor's Representative

The Contractor shall keep responsible representative at site or work place during all working hours, who shall, on receiving a reasonable notice, present himself to the Engineer, Engineer's Representative or their Assistants. The instructions and orders given to the Contractor's representative shall be deemed to have the same force as if they have been given to the Contractor.

The Contractor should furnish the necessary Power of Attorney in favour of his representative for the purpose of this clause. Failure on part of the Contractor to comply with this provision shall constitute a breach of Contract and may lead to action under clause 50.0.

13 SUBCONTRACTING

13.1 Subcontracting

NOT ALLOWED

14 PROVISIONS OF EFFICIENT AND COMPETENT STAFF

The Contractor shall employ and keep on the works at all times efficient and competent staff to give necessary directives to his workers to see that they execute works in a safe and proper manner. The Contractor shall employ only such supervisors and workmen as are capable, careful, and skilled. The Engineer shall be at liberty to object to and order the Contractor to remove forthwith from the works, any person employed by the Contractor in or about the execution of works or maintenance of works, who, in the opinion of the Engineer, misconducts himself or is incompetent or negligent in the proper performance of his duties or whose employment is otherwise considered by the Engineer to be undesirable and such person shall not be employed again in the works without the written permission of the Engineer. Any person so removed from the works shall be replaced as soon as possible by a competent substitute.

15.0 PROGRAMME OF WORK

The Contractor shall submit the programme for completion of work to the Engineer for his approval within 5 days from the date of receipt of letter of acceptance/work order. Unless otherwise directed, the programme shall be in the form of Bar-Chart showing proposed execution of quantities of principal items of work. The programme shall be related to the capability of equipment proposed to be deployed and site conditions. The Contractor shall also provide in writing methodology for execution of major items of work. The submission and approval of such programme shall not relieve the Contractor of any of his duties or responsibilities or obligations under the contract. The Engineer shall have full power and authority during the progress of work, to issue such instructions as may be necessary for the proper and adequate execution of the work.

16.0 COMMENCEMENT OF WORK

The Contractor shall commence the works within the time limit as specified in the Letter of Acceptance/ work order.

17.0 ACCESS TO SITE OF WORK

17.1 Access to Engineer

NOT APPLICABLE

18.0 SETTING OUT

NOT APPLICABLES.

19.0 TEMPORARY WORKS

i) NOT APPLICABLE

ii) NOT APPLICABLE.

20.0 SPECIFICATIONS AND DRAWINGS

20.1 The Contractor shall keep at site in good condition one copy of latest approved Specifications and Drawings and also such other Contract documents as may be necessary and make them available to the Client/Employer/Engineer or his Representative at all reasonable times. Any specification & drawing shall not be used on any other work or communicated to a third party by the Contractor.

20.2 Adherence to Specifications and Drawings

The work shall be executed in conformity with the specifications and drawings of the Contract issued to the Contractor by the Engineer from time to time. If the Contractor does any work or part of work in a manner not in conformity to the specifications or drawings without the approval of the Engineer, he shall bear all the costs arising there from including dismantling and reconstruction strictly in accordance with the specifications and drawings and shall be responsible for all the losses/delays to the Employer/Engineer/Client. The term drawings in this sub-clause also include the drawings prepared by the Contractor and approved by the Engineer.

20.3 Meaning & Intent of Specifications and Drawings

If any ambiguity arises as to the meaning and intent of any portion of the specifications and drawings or as to execution or quality of any work or material or as to the measurement of the works, the decision of the Engineer thereon shall be final and binding.

21.0 INDEMNITY BY THE CONTRACTOR

21.1 Indemnity against all actions of Contractor

The Contractor shall hold and save harmless and indemnify the Client/Employer/Engineer and their employees, from all actions, suits, proceedings, loss, costs, damages, charges, claims and demands of every nature and description brought against or recovered from the Client/Employer/Engineer and their employees by reason of any act or omission of the Contractor and/or his representative and/or his Employees and/or his sub-contractors in the execution of the works or in the guarding of the same. All the sums payable by Client/Employer/ Engineer by way of compensation under any of these conditions, shall be recovered from the Contractor, without reference to the actual loss or damage sustained, and whether or not any damage shall have been sustained.

21.2 Indemnity against all Claims of Patent rights and Royalties

The Contractor shall hold and save harmless and indemnify the Client/Employer/Engineer, his officers and Employees from and against all claims and proceedings for or on account of infringement by the Contractor of copyright, any patent rights, design, trademark or name, secret process, patented or unpatented invention, articles or appliances manufactured or used for or in connection with the works and from and against all claims, proceedings, costs, damages, charges, and expenses whatsoever in respect thereof or in relation thereto. The Contractor shall pay all royalties, taxes, rent and other payments or compensation, if any, for getting the materials required for the works and due fulfillment of the contract and indemnify Client/Employer/Engineer and their officers, employees against any claims in this regard.

22.0 DAMAGE TO LIFE AND PROPERTY:

DELETED

23.0 SAFETY OF PUBLIC AND PUBLIC UTILITIES

NOT APPLICABLE

24.0 OTHER SAFETY PROVISIONS

DELETED

25.0 PROTECTION OF ENVIRONMENT

DELETED

26.0 CARE OF WORKS

DELETED

27.0 USE OF EXPLOSIVES

DELETED

28.0 OCCUPATION AND USE OF LAND

DELETED

29.0 EXCAVATED MATERIALS

DELETED

other substance or materials, which may be obtained from any excavation made at site. All such items shall be the property of the Client. The Contractor may be permitted by the Engineer to use the same for the purpose of works on mutually agreed payment terms.

30.0 RELICS AND TREASURES

All gold, silver, coins, oil and other minerals of any description, and precious stones of all kinds, treasures, antiques, fossils and other similar things, which shall be found in or at site, shall be the property of the Client and the Contractor shall duly preserve the same to the satisfaction of the Engineer, and from time to time deliver the same to such person or persons, as the Client/Engineer may appoint to receive the same.

31.0 CO-OPERATION WITH OTHER CONTRACTORS

The Contractor shall in accordance with the requirements of the Engineer, cooperate with and afford all reasonable opportunities for carrying out the work by other Contractors engaged by the Client/Employer/Engineer or any other Authority.

32.0 WORK DURING NIGHT

Unless specifically provided elsewhere in the Contract, the Contractor shall not carry out any work between sunset and sunrise without the prior permission of the Engineer. In case of any grave emergency or in order to avoid risk to property and life or to prevent damage to utilities or to restore them, work may be done at night also without the prior permission of the Engineer, but intimation to this effect should be sent to him immediately. No increase in rates or extra payment shall be admissible for the night work. The Contractor shall make adequate lighting and safety arrangements for night working. He shall also be responsible for any claim on account of any injury to or loss of life, of any one, arising out of inadequate lighting, safety arrangements or due to any other failure of the Contractor.

33.0 SHEDS, STORES, YARDS

DELETED

34.0 DELETED

35.0 DELETED

36.0 PLANT AND MATERIALS OF THE CONTRACTOR

- 36.1 Contractor's plant/materials at site to be exclusive to the work**
DELETED
- 36.2 Removal of constructional plant/materials from site**
DELETED
- 36.3 Loss or damage to constructional plant/materials**
DELETED
- 37.0 CONTRACTOR TO KEEP SITE CLEAR**
- During the progress of works, the Contractor shall keep the site reasonably clean and free from obstructions and shall store neatly construction plant and materials.
- 38.0 HEALTH AND SANITARY ARRANGEMENTS FOR WORKERS**
- 38.1** No quarters shall be provided by Employer/Engineer for the accommodation of Contractor or any of his staff employed on works. Contractor shall ensure that his workmen do not use the site premises for any illegal or immoral purposes or as temporary accommodation. All workers shall leave the site on a daily basis after the day's work is over and no cooking shall be undertaken anywhere in the building including work site.
- 38.2 Provision of labour Camp**
DELETED
- 38.3 Compliance with Rules for employment of labour**
DELETED
- 38.4 Medical facilities at site**
DELETED
- 38.5 Use of Intoxicants**
DELETED

39.0 ENGAGEMENT OF LABOUR

The Contractor shall make his own arrangements for the engagement of all labour. The Contractor shall not employ any labour below the age prescribed in any labour legislation, directly or through petty Contractors or sub-Contractors, for execution of the work.

40.0 WAGES OF LABOUR

40.1 Wages under relevant laws.

In dealing with labour and employees, the Contractor and his subcontractors (including piece rate and petty Contractors) shall comply fully with all laws and statutory regulations including but not limited to the following:

- i) Workmen's Compensation Act, 1923
- ii) Payment of Gratuity Act, 1972
- iii) Employees Provident Funds and Miscellaneous Provisions Act, 1952
- iv) Maternity Benefits Act, 1951
- v) Contract Labour (Regulations and Abolition) Act, 1970
- vi) Minimum Wages Act 1948
- vii) Payment of Wages Act 1936
- viii) Equal Remuneration Act 1979
- ix) Payment of Bonus Act 1965
- x) Industrial Dispute Act 1947
- xi) Industrial Employment (Standing Orders) Act 1946
- xii) Trade Union Act 1926
- xiii) Child Labour (Prohibition and Regulation) Act 1986
- xiv) Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act 1979
- xv) The Buildings and Other Construction Workers (Regulation of Employment and Conditions of Service) Act 1996 and Cess Act of 1996.
- xvi) The Factories Act 1948

and other laws or Regulations framed by competent legislative authorities from time to time as may be applicable or brought in force. In accordance with the various Acts and Regulations with all up-to date amendments, the Contractor shall ensure that he and his subcontractors (including petty and piece rate Contractors) observe strictly inter-alia the following:

- a. Wages paid are not less than those prescribed.
- b. Wages and other dues are paid regularly and in time.
- c. Licenses are obtained as required under any of the acts or regulations.
- d. Maintain prescribed records, submit necessary statements to authorities concerned and display required notices.
- e. Take prompt action on any instructions / directions from the authorities under various labour laws.

40.2 Claims on account of violation of labour laws

If any moneys shall, as a result of any instructions, directions or decisions from the authorities or claim or application made under any of the labour laws or regulations, be directed to be paid by the Employer/Engineer because of any failure on the part of the Contractor, such moneys shall be deemed to be moneys payable to the Employer/Engineer by the Contractor and on failure of the Contractor to repay the Employer/Engineer any moneys paid or to be paid as aforesaid within seven days after the same shall have been demanded, the Employer/Engineer shall be entitled to recover the amount from any moneys due or becoming due to the Contractor under this or any other contract with the Employer.

41.0 REPORTING OF ACCIDENTS INVOLVING LABOUR

The Contractor shall be responsible for safety of all employees/labour employed by him on works, directly or through petty Contractors or sub-Contractors and shall report accidents, occurring on works to the Engineer or the Engineer's representative, and shall make every arrangement to render all possible assistance and to provide prompt and proper medical attention. In case of fatal accident, it will be Contractor's responsibility to report accident to police keeping the Engineer advised of the same. The compensation for affected workers or their relatives shall be paid expeditiously by the Contractor in accordance with the Workmen's Compensation Act or as may be decided by the labour Authorities.

42.0 SUPPLY OF WATER AND ELECTRIC POWER

DELETED

43.0 REPAIR TO DAMAGES

The Contractor shall be responsible for rebuilding/repairs of any damage to works, caused by any reasons what so ever. In case the design is supplied by Engineer/Client the same shall be reviewed by the contractor before execution of works and intimate in writing any discrepancy in drawing/ design supplied by the Engineer/ Client. In case the Contractor is unable or unwilling to execute such repair works promptly, the Engineer may get the same done by engaging another agency or using labour, materials and resources as may be considered necessary and the cost of such remedial works shall be

recovered from the Contractor's dues. The decision of the Engineer regarding reasons of the damage shall be final and binding.

44.0 IMPLEMENTATION OF QUALITY MANAGEMENT SYSTEM

44.1 The Contractor shall execute the work following the safety norms which shall include but not be limited to providing safety equipment, safety shoes and helmets to all workers, erecting of safety barricades and displaying safety posters and instructions about awareness for safety.

44.2 The Contractor shall arrange timely calibration of all his measuring and testing equipment at his own cost from reputed laboratory and supply of calibration certificates to the Engineer.

44.3 The Contractor shall arrange to provide test certificates issued by manufacturers for materials supplied by him or arrange to test the materials at his own cost in a reputed laboratory and supply test certificates to the Engineer.

45 MATERIALS AND WORKMANSHIP

45.1 Material and workmanship as per Specifications

- i. All materials and workmanship shall be as per the contract and in accordance with the Engineer's instructions and shall be subjected to such tests as the Engineer may direct. The Contractor shall provide all such assistance, instruments, machines, labour and materials required for examining, measuring and testing any work and materials used. The Contractor shall supply samples of material before incorporating in the works for testing as may be selected and required by the Engineer.
- ii. The sources of materials to be used in the works shall be intimated to the Engineer and are subject to his approval.

45.2 Supply of sample

DELETED

45.3 Cost of tests of Materials and Workmanship

DELETED

46.0 REMOVAL OF IMPROPER MATERIALS AND WORKS

DELETED

47.0 EXAMINATION OF WORK BEFORE COVERING UP

No work or part of work shall be covered up or put out of view, without the prior approval of the Engineer or the Engineer's representative. If any work shall be covered up or put beyond the reach of inspection/measurement without the prior approval of the Engineer or Engineer's representative, the same shall be uncovered by the Contractor at his own cost.

48.0 SUSPENSION OF WORKS ORDERED BY THE ENGINEER

The Contractor shall, on the order of the Engineer, suspend the works or any part thereof, for such time, and in such manner, as the Engineer may consider necessary, and shall during such suspension, properly protect and secure the works so far as it is necessary in the opinion of the Engineer.

The Contractor shall not be entitled to extra cost, if any, incurred by him during such suspension if such suspension is on account of weather conditions or requirement for execution of works or provided for in the Contract or for less than 30 days at a time for any other reason. The Contractor shall, however, be entitled for extension of time for completion of work as the Engineer may consider proper having regard to the period of suspension. However, if the suspension is ordered by the Engineer due to any default of the Contractor such as defective materials, workmanship, delays etc., the Contractor shall not be entitled to any extension or extra cost incurred.

49.0 DELAY AND EXTENSION OF CONTRACT PERIOD

49.1 The time allowed for execution and completion of the works or part of the works, as specified in the contract, shall be essence of the contract.

49.2 As soon as it becomes apparent to the Contractor, that the work and / or portions thereof (required to be completed earlier), cannot be completed within the period(s) stipulated in the contract, or the extended periods granted, he shall forthwith inform the Engineer and advise him of the reasons for the delay, as also the extra time required to complete the works and / or portions of work, together with justification there for. In all such cases, whether the delay is attributable to the Contractor or not, the Contractor shall be bound to apply for extension well within the period of completion/extended period of completion of the whole works and / or portions thereof.

49.3 Extension due to modifications

If any modifications are ordered by the Engineer or site conditions actually encountered are such, that in the opinion of the Engineer the magnitude of the work has increased materially, then such extension of the stipulated date of completion may be granted, as shall appear to the Engineer to be reasonable.

49.4 Delays not due to Employer/Contractor.

If the completion of the whole works (or part thereof which as per the contract is required to be completed earlier), is likely to be delayed on account of:

- a. Any force majeure event referred to in Clause 71.0 or
- b. Delay on the part of other Contractors engaged directly by the Client/Employer, on whose Progress the performance of the Contractor necessarily depends or
- c. Any relevant order of court or
- d. Any other event or occurrence which, according to the Engineer is not due to the Contractor's failure or fault, and is beyond his control;

The Engineer may grant such extensions of the completion period as in his opinion is reasonable.

49.5 Delays due to Employer/Engineer.

In the event of any failure or delay by the Employer/Engineer in fulfilling his obligations under the contract, then such failure or delay, shall in no way affect or vitiate the contract or alter the character thereof; or entitle the Contractor to damages or compensation thereof but in any such case, the Engineer shall grant such extension or extensions of time to complete the work, as in his opinion is / are reasonable.

49.6 Delays due to Contractor and Liquidated Damages:

If the delay in the completion of the whole works or a part of the works, beyond stipulated completion period, is due to the Contractor's failure or fault, then, the Engineer may allow the Contractor extension or further extension of time, for completion, as he may decide, subject to the following:

- a. Without prejudice to any other right or remedy available to the Engineer, recover by way of liquidated damages and not as penalty, a sum of Rs.1,00,000/- (Rupees One lacs only) for each day the Contractor is in default.
- b. The recovery on account of compensation for delay shall be limited to 10% of the contract value of the works.

The recovery of such damages shall not relieve the Contractor from his obligation to complete the work or from any other obligation and liability under the contract.

49.7 Engineer's decision on compensation payable being final

The decision of the Engineer as to the compensation, if any, payable by the Contractor under this clause shall be final and binding.

49.8 Time to continue to be treated as the essence of contract in spite of extension of time.

It is an agreed term of the contract that notwithstanding grant of extension of time under any of the sub-clauses mentioned herein, time shall continue to be treated as the essence of contract

50.0 TERMINATION OF CONTRACT DUE TO CONTRACTOR'S DEFAULT

50.1 Conditions leading to termination of contract

- i. If the Contractor
 - a. becomes bankrupt or insolvent, or,
 - b. makes arrangements with or assignment in favour of his creditor, or agrees to carry out the contract under a committee of inspection of his creditors or
 - c. being a company or corporation goes into liquidation by a resolution passed by the Board of Directors/ General Body of the share-holders or as a result of court order (other than voluntary liquidation for the purpose of amalgamation or reconstruction) ; or
 - d. has execution levied on his goods or property or the works, or
 - e. assigns or sublets the contract or any part thereof otherwise than as provided for under conditions of this contract, or
 - f. abandons the contract, or
 - g. persistently disregards instructions of the Engineer, or
 - h. fails to adhere to the agreed programme of work or fails to complete the works or parts of the works within the stipulated or extended period of completion, or is unlikely to complete the whole work or part thereof within time because of poor record of progress; or
 - i. fails to remove materials from the site, or pull down and replace work, after receiving notice from the Engineer to the effect that the said materials or works have been condemned or rejected, or
 - j. fails to take steps to employ competent and/ or additional staff and labour, or

- k. fails to afford the Engineer or his representative proper facilities for inspecting the works or any part thereof, or
- l. promises, offers or gives any bribe, commission, gift or advantage, either himself or through his partners, agents or servants to any officer or employee of the Engineer or the Employer, or to any person on their behalf, in relation to obtaining or execution of this or any other contract with the Employer, or
- m. suppresses or gives wrong information while submitting the tender.

In any such case the Engineer on behalf of the Employer may serve the Contractor with a notice in writing to that effect and if the Contractor does not, within 7 days from the date of such notice, proceed to make good his default in so far as the same is capable of being made good, and carry on the work or comply with such instructions as aforesaid to the entire satisfaction of the Engineer, the Employer shall be entitled after giving 48 hours notice in writing to terminate the contract, as a whole or in part or parts (as may be specified in such notice).

ii. In such a case of termination, the Employer/Engineer may adopt the following courses

- a) Take possession of the site and any materials, constructional plants, equipment, stores, etc.
- b) Measure up whole or part of the work from which the Contractor has been removed, and get it completed by another Contractor. The manner and method, in which such work is to be completed, shall be entirely at the discretion of the Engineer whose decision shall be final and binding.
- c) Carry out the whole or part of the work from which the Contractor has been removed, by the employment of the required labour, materials, plants and equipment and other resources.

502 Entitlement of Employer/Engineer:

In cases described in sub-clause 50.1 (ii) above, the Employer/Engineer shall be entitled to:

- a. Forfeit the whole or such portion of the Performance Security amount, as he may deem fit, and
- b. Recover from the Contractor the cost of carrying out the balance work in excess of the sum, which he would have been paid, according to the certificate of the Engineer, if the works had been carried out and completed by the Contractor under the terms of the contract. Such certificate shall be final and binding upon the Contractor. The amount to be recovered may be deducted by the Employer/Engineer from the retention money or any other moneys due to the Contractor alone or jointly under this or any other contract.

51.0 TERMINATION OF CONTRACT ON EMPLOYER/ENGINEER'S ACCOUNT:

The Employer/Engineer shall be entitled to terminate the contract, at any time, should, in the Employer/Engineer's opinion, the cessation of works becomes necessary, owing to paucity of funds or due to court orders or due to any other cause whatsoever. Notice in writing from the Employer/Engineer of such termination and reasons there for, shall be conclusive evidence thereof. In such a case, the value of approved materials actually brought to the site and of work done up to date by the Contractor, shall be paid for in full by the Employer/Engineer, at rates specified in the contract. If rates for any materials or items of work are not available in the contract, these shall be fixed by the Engineer in terms of clause 59.

However, the Contractor shall have no claim to any payment of compensation or otherwise, on account of any profit or advantage which he might have derived from the execution of the contract in full but which he could not in consequence of determination of contract under this clause.

In case, the Contractor defaults, the Engineer shall recover the amounts from any payment due to the Contractor, or from the Performance Security or by encashing the Bank Guarantees given by the Contractor for securing the advances or for any other purpose. This is without prejudice to other remedies available to the Employer/Engineer.

52.0 DEATH OF CONTRACTOR/ PARTNER

If the Contractor is an individual or a sole proprietary concern, and the individual or a sole proprietor dies, or if the Contractor is a partnership concern and one of the partners dies, in that case, unless the Employer/Engineer is satisfied that the legal representative of the individual Contractor or of the sole proprietor, as the case may be, or in the case of partnership firm, all surviving partners are capable of carrying out and completing the contract, the Employer/Engineer shall be entitled to terminate the contract as to its incomplete part. In that event, the Employer/Engineer shall not be liable to pay any compensation to the legal heirs of the deceased Contractor and / or to the surviving partners of the Contractor's firm, on account of such cancellation of contract. The Engineer's decision as to whether the legal representatives of the deceased Contractor or surviving partners of the Contractor are capable of carrying on and completing the contract shall be final and binding on the parties. Provided further that the legal representatives of the deceased Contractor or the surviving partners shall also not be liable to pay any damages, alleged or actually suffered by the Employer/Engineer, in respect of incomplete part of the contract. Any liability incurred by the deceased Contractor, or by the deceased partner of the contracting firm, before his death, shall be recovered from the legal representatives of the deceased Contractor or from the surviving partners of the said contracting firm as the case may be.

53.0 EMPLOYMENT OF RETIRED OFFICERS/ENGINEER OF EMPLOYER/ENGINEER.**DELETED****54.0 MODIFICATION TO CONTRACT**

Subject to clause 55, in the event of any provisions of the contract requiring to be modified after the agreement has been signed, the modifications shall be made in writing and signed by the Employer/Engineer and the Contractor or his authorized representative. Such modifications will not be effective until the same have been signed by both the parties. Any verbal or written arrangements for abandoning, modifying extending, reducing or supplementing the contract, or any of the terms thereof shall be deemed to be provisional and shall not be binding on the Employer/Engineer unless and until the same are incorporated in a formal instrument and signed by the Employer/Engineer and the Contractor.

55.0 MODIFICATIONS TO WORK

The Engineer shall be competent to order in writing to enlarge or extend, diminish or reduce the works or make any alterations in their design, character, position, site, quantities, dimensions or in the method of execution or use of materials for the execution thereof and to any additional works to be done or any work not to be done.

The enlargement, extension, diminution, reduction, alterations or additions, referred to above shall in no way affect the validity of the contract, but shall be performed by the Contractor as provided therein and be subject to the same conditions, stipulations, obligations and rates as if they had been originally and expressly included and provided for in the Bill of Quantities, specifications and drawings, and the amount to be paid there for shall be calculated in accordance with accepted rates and other extra items of works at the rates, determined as per contract.

56.0 RATES FOR ITEMS OF WORK TO BE ALL INCLUSIVE

- i. The rates entered in the accepted Bill of Quantities of the Contract, shall be all-inclusive and provide for works duly and properly completed in accordance with terms and conditions of the Contract and processes as mentioned in specifications and drawings (including revised drawings), relevant codes whether mentioned or not in the nomenclature of the item in Bill of Quantities. All rates quoted in the quotation shall also be deemed to include, except specifically provided otherwise, in the Contract:
 - All Softwares, materials, stores, Stationary and Consumables, etc.
- ii. Nothing extra shall be payable over the quoted rates, except as specifically provided in the Contract.
- iii. All rates quoted in the Bill of Quantities shall be inclusive of any/ all direct and indirect taxes imposed by Central/State Govt. and local bodies such as GST, excise duty, Works contract tax, royalties, duties, Cess, octroi, cess under building & other construction workers welfare cess act and other levies as applicable and also include all import duties. The rates shall also be inclusive

of all taxes, duties and other charges imposed outside the country on the production, manufacture, sale and transport of the Contractor's equipment, plant, materials and supplies to be used on or furnished under the contract and on the services performed under the contract. No additional amount shall be paid or claim be entertained on this account by Employer/Engineer.

57.0 ACCEPTED RATE APPLICABLE TILL THE COMPLETION OF WORK

The rates as per the accepted Bill of quantities, shall be firm and hold good till the completion of the works, and no additional claim or amount shall be admissible on account of fluctuations in market rates, increase in taxes, levies, fees royalties etc. unless specifically provided for in the Contract.

58.0 VARIATION IN QUANTITY OF ITEMS COVERED BY THE BILL OF QUANTITIES

- i) The quantities of items shown in the Bill of Quantities are approximate, and liable to vary during the actual execution of the work. The Contractor shall be bound to carry out and complete the stipulated work, irrespective of the variations in individual items, specified in the Bill of Quantities.
- ii. Such variations in individual BOQ items shall be paid at BOQ rates except in the situation as provided for below:

If the quantum of variation in any BOQ item is such that, in the opinion of DIMTS/Contractor, the rate in the contract for any BOQ item, by reason of such variation, is rendered inappropriate, then, after due Consultation between Engineer-in-Charge and Contractor, a suitable revised rate shall be agreed upon between Contractor & DIMTS. In the event of disagreement, DIMTS shall fix such other revised rate as in his opinion, appropriate and shall notify the Contractor accordingly and the same shall be binding on Contractor. However, the provisions of this clause shall be subject to following:

(a) No change in the rate for any item contained in BOQ shall be considered in case of any decrease in the actual quantity of work executed. Similarly, in case of deletion of a particular BOQ item or a group of BOQ items, no claim for loss of profit or revision of rates of any other BOQ item shall be considered.

(b) In case of positive variation in any BOQ item, the change in the rate of BOQ item shall be effected only if the total actual quantity executed is more than 1.25 times the BOQ quantity and also the amount of variation beyond BOQ quantity is more than 2% of contract value (calculated as per BOQ rate) (both the conditions to be satisfied). In case this condition is satisfied, the revised rate shall be applicable only to the quantities exceeding 1.25 times BOQ quantity.

59.0 ITEMS NOT INCLUDED IN THE BILL OF QUANTITIES

59.1 If any item of work not provided for in the accepted Bill of quantities and required to be executed for completion of work, the Contractor on receipt of instructions from the Engineer, shall be bound to carry out such items of work at the rates to be decided as per sub-clause 59.2 and 59.3.

59.2 The rate for such extra items shall be derived from rate for similar items available in the accepted Bill of Quantities.

59.3 In case rates cannot be derived from the accepted Bill of Quantities, the rate may be worked out on the following basis:

- a. Cost of materials and consumables at current market rates, as actually utilised in the final finished permanent work, including a reasonable percentage for wastage and cost of loading, unloading and transportation.
- b. Cost of labour required for the work.
- c. Hire charges for plant and machinery, scaffolding, shuttering, forms, etc. required to be used at the site of the work.
- d. An amount of 15% of items (a), (b) and (c) above to allow for Contractor's overheads, profits and other contingencies.

59.4 In all cases where extra items of work are involved, for which there are no rates in the accepted Bill of quantities, the Contractor shall give a notice to the Engineer, of at least 7 days before the need for their execution arises.

Such a notice shall not however be necessary if the Engineer has already instructed in writing to take up such an item of work. To decide the rate, the Contractor shall furnish detailed analysis of the rates on the lines mentioned in sub-clause 59.2 and 59.3 above and attend a meeting with Engineer to

settle the rate as and when called for. The Contractor shall be bound to furnish the requisite details and to attend the meeting.

59.5 Provisional payment for extra item

In case mutually agreeable settlement of rates is not arrived at between the Engineer and the Contractor, the Contractor shall be bound to carry out the works at rates to be decided by the Engineer. In the absence of a finalised rate for a new item, the Engineer shall be entitled to certify payment to the Contractor based on a provisional rate fixed by the Engineer for the work done under the new item. This shall be subject to upward or downward adjustment after the rate is finalised by the Engineer for that item.

59.6 The decision of the Engineer under this clause shall be final and binding.

60.0 LIEN IN RESPECT OF CLAIMS IN OTHER CONTRACTS

Any moneys due to the Contractor either alone or jointly with others, including the performance guarantee amount returnable to him may be withheld or retained or en-cashed by exercise of lien by the Client/ Employer/Engineer against any claim of the Client/ Employer/Engineer or any other branch, office department or subsidiary of the Client/ Employer/Engineer in respect of a sum of money arising out of or under any contract other than the present contract made by the Contractor alone or jointly with the Client/ Employer/Engineer or any other branch, office, department or subsidiary of the Client/ Employer/Engineer. It is agreed term of contract that the sum of money so withheld or retained under this clause by the Client/ Employer/Engineer, shall be kept withheld or retained till the claims arising out of or under the contract, are either mutually settled or determined by the Arbitrator, or by the competent court, as the case may be and that the Contractor shall have no claim for interest or damages whatsoever on this account or any other account, in respect of any sums of money withheld retained, under this clause and duly notified to the Contractor.

61.0 MEASUREMENTS OF WORK AND PAYMENTS

61.1 Measurements

The Contractor shall be paid for the works at rates in the accepted Bill of Quantities of the contract and extra items of work at rates determined under clause 59.0 of these conditions. The measurement shall be taken by the Engineer or his representative in the presence of the Contractor or his authorised representative.

61.2 Measurement of work at regular intervals

The measurements of the work shall be taken in accordance with the contract during progress of work and at such intervals, as in the opinion of the Engineer or Engineer's Representative shall be proper, having regard to the progress of the work. On an agreed date and time, the Engineer or his Representative shall take the on account or final measurements in the presence of the Contractor or his authorised representative. The Engineer or his authorised representative shall sign the measurements, which shall also be signed by the Contractor or his authorised representative as an acceptance of the measurements. If the Contractor or his representative fails

to turn-up at the time of taking measurements in spite of notice to do so, the Engineer or his representative shall be entitled to record the measurements ex-parte and these shall be final and binding on the Contractor.

61.3 Measurement of works as per records and drawings

- i. For the purpose of measuring such permanent works, as are to be measured by records and drawings, the Contractor shall prepare records and drawings at regular intervals and submit to the Engineer or Engineer's representative for his scrutiny.
- ii. In case, there is a discrepancy in the measurements of work done and the measurements as per drawings, measurements for the minimum of the two shall only be accounted for, provided the executed work is acceptable to the Engineer.
- iii. The Engineer or the Engineer's representative shall have the right to rectify any incorrect measurements and delete/correct any measurements if it is found at a later stage that the work is incomplete, defective and/or not conforming to the specifications.

62.0 ON ACCOUNT PAYMENTS

62.1 The Contractor shall be entitled to be paid from time to time, by way of "On-account" bills, only for such works, as in the opinion of the Engineer, the Contractor has executed in terms of the contract (as advance). Such payments shall be made at intervals to be decided by the Engineer depending upon the progress of work. Payment shall be made only on submission of bills along-with measurements and necessary documents by the Contractor for scrutiny of the Engineer for complete work. The amount certified shall account for all deductions, including statutory deductions as for statutory tax, income tax, etc., recoveries for advances and any amounts due from the Contractor. Such payments made by the Engineer shall not constitute any final acceptance of the measurements. In case of any discrepancy, the Engineer shall have the right to alter, modify, reduce or diminish the quantities or classification entered in the Measurement Books. In such cases, the Engineer shall have the right to recover any amount paid in an earlier bill/bills from any subsequent bill/bills and should the amount to be recovered be more than the amount of the subsequent bills, the Contractor shall on demand from the Engineer immediately refund the amount to the Engineer.

62.2 DELETED

62.3 No payment under the contract shall be made to the Contractor before receipt of performance security. The Engineer shall also be entitled to withhold payments under the above sub-clauses in case the Contractor fails to get himself registered under GST/labour laws or fails to fulfill his obligation under the contract.

63.0 FINAL MEASUREMENTS AND PAYMENTS

As soon as possible after completion of work, the Contractor shall submit the final bill along-with detailed measurements of work done, reconciliation of the materials, plant and machinery issued by the Engineer, if any, and all other statements, supporting documents required for finalisation of the bill. The final

bill, measurements and documents submitted by the Contractor shall be scrutinised by the Engineer or his representative and in case the same are found not in order, the Engineer shall direct the Contractor to re-submit the final bill along-with all details. On receipt of all requisite details and final bill

from the Contractor, the Engineer shall have the final measurements taken, recorded and signed jointly. The reconciliation of any plant, equipment and materials issued by the Engineer to the Contractor, shall also be prepared and signed jointly. Based on the final measurements and materials and plant and equipment reconciliation statements, the Engineer shall prepare the final bill.

The Contractor shall sign the Engineer's copy of the Final Bill Account in acceptance of the full and final value of the works performed under the contract, and submit a "No Claim Certificate" on the prescribed Performa along-with a list of unsettled claims, if any. The Engineer shall then arrange to make payment against the final bill. The Contractor shall not be entitled to make any claim whatsoever against Engineer under or arising out of this contract, nor shall Engineer entertain or consider any such claim, if made by the Contractor after he shall have signed a "No –Claim certificate" in favour of the Engineer. In case, the Contractor submits a list of unsettled claims along- with the "No Claim Certificate", he shall not be entitled to submit any additional claims other than those submitted along-with "No Claim Certificate".

64.0 MODE OF PAYMENT AND TAX DEDUCTION AT SOURCE

64.1 Payment by cheque only

All payments to the Contractor shall be made by account payee cheques/ RTGS unless specifically otherwise agreed by the Engineer.

64.2 Tax deduction at source

Income tax and Statutory taxes shall be deducted from the payments credited/released by Employer/Engineer to the Contractor against execution of work as per law of the land. The deductions shall be made as per prescribed rates prevalent from time to time unless a tax exemption certificate is produced by the Contractor. Amount of tax deduction shall be deposited with the concerned authorities and tax deduction certificate shall be issued by Employer/Engineer. The Employer/Engineer shall deduct at source taxes/duties under any other law/statute as may be applicable at the time of making payments. The Contractor shall furnish to the Engineer registration No. under works tax and PAN/TAN (for TDS), as applicable.

65.0 COMPLETION CERTIFICATE

65.1 As soon as the work is completed, the Contractor shall give notice of such completion, whether of the whole of the works, or of any part of the work, for which a separate date of completion is stipulated in the contract, to the Engineer, and the Engineer, within 7 days of receipt of such notice, shall inspect the work and also arrange for carrying out of such tests as may be prescribed under the contract or ordered by the Engineer. If the Engineer notices any incomplete item of work or any defect, which is to be rectified by the Contractor, or if any part or whole of the work fails to pass the specified tests, the Engineer shall furnish to the Contractor, the list of all such incomplete items of work, deficiencies, defects, failure to pass tests, etc., and may refuse to issue a Certificate of Completion to the Contractor. If in the opinion of the Engineer the work has been satisfactorily completed and has satisfactorily passed final test or tests that may be prescribed, the Engineer

shall issue a certificate of completion showing the date of completion in respect of the work. The defect liability period, if any, shall commence from the date of completion indicated in such certificate. Provided that the Engineer may issue such a certificate with respect to any part of the works, before the completion of the whole of the works, which has been so completed and/or used by the Client/Employer/Engineer. When any such certificate is given in respect of a part of the work, such part shall be considered as completed and the defect liability period of such part shall commence from the date of completion indicated in such certificate.

65.2 Completion certificate not to absolve the Contractor from his Responsibilities:

The Certificate of Completion of Works referred to in sub-clause 65.1 shall not absolve the Contractor from his liability to make good the defects, imperfections and shrinkages or faults, which may appear during the defect liability period specified in the contract, arising in the opinion of the Engineer from materials or workmanship being not in accordance with the Contract. These shall be rectified and made good by the Contractor at his own cost. In case of the default on the part of the Contractor, to so make good the defects or deficiencies, the Engineer may employ labour, plant and machinery and materials or appoint another agency or Contractor, to make good such defects, imperfections, shrinkages and faults, and all expenses consequent and incidental thereto, shall be recovered from any money due to the Contractor under the contract including the Performance Security amount or from any money payable to the Contractor by the Employer/Engineer, under any other contract.

66.0 CLEARANCE OF SITE ON COMPLETION

DELETED.

67.0 POST PAYMENT AUDIT

It is an agreed term of the contract that the Employer reserves to himself the right to carry out a post payment audit or technical examination of the works, and the final bill including all supporting vouchers, abstracts, etc. If as a result of such examination, any over payment to the Contractor is discovered to have been made in respect of any work done, the Contractor will be bound to refund the same to the Engineer or may be adjusted against any dues of the Contractor. If any under payment is discovered, the same shall be paid by the Engineer to the Contractor. Such payments or recoveries, however, shall not carry any interest.

68.0 DEFECT LIABILITY CERTIFICATE

- 68.1 In the contract, the expression "Defect Liability Period" shall mean the period of defect liability prescribed elsewhere in the contract, commencing from the date of completion of the works, as certified by the Engineer.

The Contractor shall maintain, rectify and make good at his own cost any defects/deficiencies, which may develop in the work or as notified by the Engineer during Defect Liability Period. However, maintenance during Defect Liability Period shall not include day to day upkeep, cleaning, custody and security of the work.

- 68.2 The contract shall not be considered as completed, until a Defect Liability Certificate has been issued by the Engineer stating that the works have been completed to his satisfaction. Defect Liability certificate shall be issued by the Engineer, upon expiry of Defect Liability period.

- 68.3 No certificate other than "Defect Liability Certificate" shall be deemed to constitute final approval of the work or part of the work for which it is issued.

69.0 UNFULFILLED OBLIGATIONS

Notwithstanding the issue of Defect Liability Certificate, the Contractor shall remain liable for the fulfillment of any unfulfilled obligations under the provision of the contract, prior to the issue of the Defect Liability Certificate, and for the purpose of determination of the nature and extent of any such obligation, the contract shall be deemed to remain in force between the parties thereto.

70.0 PRODUCTION OF VOUCHERS

- 70.1 The Contractor, whenever required, shall produce for examination by the Engineer, any quotation, invoice, cost or other account books, vouchers, receipts, letters, memoranda or any copy of or extract from any such documents and also furnish information and returns, as may be required, relating to the execution of this contract. The Engineer's decision on the question of relevancy of any documents, information or returns shall be final and binding on the Contractor.

- 70.2 If any part or item of the work is allowed to be carried out by a sub-Contractor, the Engineer shall have power to secure the books of such sub-Contractor, through the Contractor, and shall have power to examine and inspect the same.

71.0 FORCE MAJEURE

- 71.1 If, at any time during the currency of the contract, the performance of any obligation (in whole or in part) by the Employer or the Contractor shall be prevented or delayed by reason of any war, hostilities, invasion, acts of public or foreign enemies, rebellion, revolution, insurrection, civil commotion, sabotage, large scale arson, floods, earthquake or any other act of God, large scale epidemics, nuclear accidents, any other catastrophic unforeseeable circumstances, quarantine restrictions, any statutory, rules, regulations, orders or requisitions issued by a Government department or competent authority (hereinafter referred to as "event") then, provided notice of the happening of such an event is given by either party to the other within 14 days of the occurrence thereof.

- a. Neither party by reason of such event be entitled to terminate the contract or have claim for damages against the other in respect of such non-performance or delay in performance.
- b. The obligations under the contract shall be resumed as soon as practicable after the event has come to an end or ceased to exist.
- c. If the performance in whole or part of any obligation under the contract is prevented or delayed by reason of the event beyond a period of 60 days, the contract may be fore-closed at the discretion of Employer, by giving a notice of 30 days without any repercussions on either side.
- d. In case of doubt or dispute, whether a particular occurrence should be considered an "event" as defined under this clause, the decision of the Engineer shall be final and binding.
- e. If the contract is fore-closed under this clause, the Contractor's claim/s shall be settled for the work done under the contract, but not for any defective work or work done which has been destroyed or damaged before its measurement. The Engineer shall have the option to take over any plant and material lying at site, at rates provided for in the contract, failing that, as per rates which are determined to be fair and reasonable by the Engineer.

71.2 If no notice is issued by either party regarding the event within 14 days of occurrence, the said event shall be deemed not to have occurred and the contract will continue to have effect as such.

72.0 DISPUTE RESOLUTION MECHANISM

72.1 Amicable Resolution

- (a) Save where expressly stated to the contrary in this Agreement, any dispute, difference or controversy of whatever nature between the Parties, howsoever arising under, out of or in relation to this Agreement (the "Dispute") shall in the first instance be attempted to be resolved amicably in accordance with the procedure set forth in clause (b) below.
- (b) Either Party may require such Dispute to be referred to the Managing Director & CEO or his nominee, for amicable settlement. Upon such reference, both the Parties shall meet at the earliest mutual convenience and in any event within fifteen (15) days of such reference to discuss and attempt to amicably resolve the Dispute. If the Dispute is not amicably settled within thirty (30) days of such meeting between the Parties, either Party may refer the Dispute to arbitration in accordance with the provisions of Clause 72.2 below.

72.2 Arbitration

- (a) Procedure

Subject to the provisions of Clause 72.1, any Dispute, controversies or claims between the Parties, save where a decision of the Engineer/Employer or any other

person has been made final and binding under the contract, which is not resolved amicably, shall be finally settled by binding arbitration under the Arbitration and Conciliation Act, 1996. Such disputes shall be referred to the Sole Arbitrator to be appointed or nominated by the Managing Director & CEO of DIMTS. The Party invoking the arbitration clause shall give a notice of its intention to proceed for the arbitration. Such notice shall provide details for the claims along with the amount there for. If within 30 (thirty) days of receipt of such notice/intimation the other Party fails to appoint its arbitrator, the Party seeking appointment of arbitrator may take further steps in accordance with Arbitration Act, 1996.

- (b) Neither party shall be entitled to bring a claim for arbitration, if it is not filed within four months of the following:-
- i. Of the date of completion of the work as certified by DIMTS Or
 - ii. Of the date of abandonment of the work Or
 - iii. Of its non-commencement or non-resumption of work within 10 days of written notice for commencement or resumption as applicable. Or
 - iv. Of the cancellation, termination or withdrawal of the work from the contractor in whole or in part and/or revision or foreclosure of the contract.

If the claim pertains to rates or recoveries introduced in the final bill, the reference to the Arbitrator shall be made within four months from the date of payment of the final bill to the contractor or from the date a registered notice is sent to the contractor to the effect that his final bill is ready by Employer / Engineer (whose decision in this respect shall be final and binding) whichever is earlier.

If the claim pertains to any action by either parties during defects liability period, the reference to the Arbitrator shall be made within two months from the date of end of defects liability period.

If the matter is not referred to arbitration within the period prescribed above, all the rights and claims of either party under the contract shall be deemed to have been forfeited and absolutely barred by time for arbitration.

- (c) Place of Arbitration

The venue of arbitration shall be at Delhi.

- (d) English Language

The request for arbitration, the reply to the request, the terms of reference, any written submissions, any orders and awards shall be in English and Language of Arbitration shall be English. The Award shall be a speaking order.

- (e) Performance during Arbitration

Pending the submission of and/or decision on a dispute and until the arbitration award is published, the Parties shall continue to perform their respective obligations under this Agreement.

(f) Costs

Each of the Parties to this Agreement shall bear their own respective costs for and during the Arbitration and shall not raise any claim in respect thereof as against the other Party.

(g) Interest on Arbitration Award

Where the arbitral award is for the payment of money, no interest shall be payable on whole or any part of the money for any period, till the date on which the award is made.

72.3 Award to be binding on all parties

The award of the Sole Arbitrator, unless challenged in court of law, shall be binding on all parties.

ANNEXURE-I**FORM OF AGREEMENT***(To be executed on requisite value of stamp Papers)***AGREEMENT**

THIS AGREEMENT made on _____ day of _____ (Month/year) between **DIMTS Limited, 8th Floor, Delhi Technology Park, Shastri Park, Delhi-110053**, acting through (Project Head and name/address of the Project)(hereinafter called "the Employer/Engineer") of the one part and _____ (name and address of the Contractor) (hereinafter called "the Contractor") of the other part.

WHEREAS the Employer is desirous that certain works should be executed by the Contractor viz. **Contract No. _____** (hereinafter called "the Works", and has accepted a Bid by the Contractor for the execution and completion of such Works and the remedying of any defects therein.

NOW THIS AGREEMENT WITNESSETH as follows:

1. In this Agreement, words and expressions shall have the same meaning as are respectively assigned to them in the Terms and Conditions of Contract hereinafter referred to.
2. The following documents shall be deemed to form and be read and construed as part of this Agreement:
 - a) Letter of Acceptance / Work order
 - b) Notice Inviting Quotation
 - c) Instructions to the Tenderers
 - d) Appendix to Terms and Conditions
 - e) Form of Quotation/Bid
 - f) Terms and Conditions :- (B) Special Conditions of Contract
 - g) Terms and Conditions :- (A) General Conditions of Contract
 - h) Technical Specifications
 - i) Relevant codes and Standards
 - j) Drawings
 - k) Bill of Quantities

3. In consideration of the payments to be made by the Employer to the Contractor as hereinafter mentioned, the Contractor hereby covenants with the Employer to execute and complete the Works and remedy any defects therein in conformity in all respects with the provisions of the Contract.
4. The Employer hereby covenants to pay the Contractor in consideration of the execution and completion of the Works and the remedying of defects therein the Contract Price or such other sum as may become payable under the provisions of the Contract at the times and in the manner prescribed by the Contract.

IN WITNESS whereof the parties hereto have caused this Agreement executed the day and year first before written.

(Name, Designation and address of the authorised signatory)

Signed for and on behalf of the Contractor in the presence of:

Witness:

1.

2.

(Name, Designation and address of the authorised signatory)

Signed for and on behalf of the Employer in the presence of:

Witness:

1.

2.

Name and address of the witnesses to be indicated.

ANNEXURE-II

PERFORMANCE BANK GURANTEE (UNCONDITIONAL)

To
DIMTS Limited,
8th Floor , Delhi Technology Park
Shastri Park ,
Delhi 110053

WHEREAS _____ [*name and address of contractor*] (hereinafter called “the Contractor”) has undertaken, in pursuance of Contract No. _____ dated _____ to execute _____ [*name of Contract and brief description of Works*] (hereinafter called “the Contract.”);

AND WHEREAS it has been stipulated by you in the said Contract that the Contractor shall furnish you with a Bank Guarantee by a scheduled bank for the sum specified therein as security for compliance with his obligations in accordance with the Contract;

AND WHEREAS we have agreed to give the Contractor such a Bank Guarantee;

NOW THEREFORE we hereby affirm that we are the Guarantor and responsible to you, on behalf of the Contractor, up to a total of _____ [*amount of Guarantee*], _____ [*amount in words*], such sum being payable in the types and proportions of currencies in which the Contract Price is payable, and we undertake to pay you, upon your first written demand and without cavil or argument, any sum or sums within the limits of _____ [*amount of Guarantee*] as aforesaid without your needing to prove or to show grounds or reasons for your demand for the sum specified therein.

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

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

This guarantee shall be valid upto _____.

SIGNATURE AND SEAL OF THE GUARANTOR

Name of Bank: _____
Address: _____
Date: _____

ANNEXURE-III

BANK GURANTEE FOR RELEASE OF 50% OF RETENTION MONEY

To

DIMTS Limited,
8th Floor , Delhi Technology Park
Shastri Park ,
Delhi 110053

WHEREAS _____ [*name and address of contractor**] (hereinafter called “the Contractor”) has undertaken, in pursuance of Contract No. _____ dated _____ to execute _____ [*name of Contract and brief description of Works*] (hereinafter called “the Contract.”);

AND WHEREAS it has been agreed by you in the said Contract that the Contractor has option to get release 50% of the Retention Money against un-conditional Bank Guarantee from a Scheduled Bank acceptable to you as security for compliance with Contractor’s obligation in accordance with the contract (Sub clause _____).

AND WHEREAS the Contractor has opted to get released the 50% of the retention money against an unconditional Bank Guarantee;

NOW THEREFORE we hereby affirm that we are the Guarantor and responsible to you, on behalf of the Contractor, up to a total of _____ [*amount of Guarantee*], _____ [*amount in words*], such sum being payable in the types and proportions of currencies in which the Contract Price is payable, and we undertake to pay you, upon your first written demand and without cavil or argument, any sum or sums within the limits of _____ [*amount of Guarantee*] as aforesaid without your needing to prove or to show grounds or reasons for your demand for the sum specified therein.

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

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

This guarantee shall be valid up to _____ (till DIMTS Limited certifies repayment of retention money in accordance with Sub-clause 8.5 of Terms and Conditions of Contract (A) General Conditions of Contract).

SIGNATURE AND SEAL OF THE GUARANTOR

Name of Bank: _____
Address: _____
