

Clause No.		GENERAL CONDITIONS OF CONTRACT (GCC)
		<p>where its disclosure is necessary for purposes of implementation and enforcement.</p> <p>The parties shall not rely on or treat as evidence in Independent Engineer/ Mediation/ Conciliation/ and in any way Arbitral or Judicial proceedings, whether or not such proceedings relate to the dispute that is the subject of the Mutual consultation proceedings-</p> <ul style="list-style-type: none"> a) views expressed or suggestions made by the other party in respect of a possible settlement of the dispute; b) admissions made by the other party in the course of the mutual consultation proceedings; c) the fact that the other party had indicated his willingness to accept a proposal for mutual settlement.
	6.2	<p>*Resolution of Dispute through Independent Engineer (IE)</p> <p>If the parties fail to resolve the dispute or difference by mutual consultation within the period specified at Cl. 6.1 above, the dispute shall be referred to Independent Engineer (IE), as follows:</p> <p>I. Appointment, Selection and Removal of IEs/Experts:</p> <p>i) The Employer and Contractor shall jointly select only one Member for the Contract from the panel of Experts, as specified in Special Conditions of Contract, as amended from time to time by Ministry of Power. After the award of the contract, the Contractor shall shortlist at least 3 Experts from the 'Panel of Experts as Independent Engineer' enclosed in the Special Conditions of Contract, as amended from time to time by Ministry of Power and send to EMPLOYER who shall appoint one of them as 'Independent Engineer' for the Contract.</p> <p>The Expert would be designated as 'Independent Engineer' (IE) for the contract. Appointment of IE/ Expert shall be finalized within twenty-eight (28) days from award of Contract.</p> <p>ii) The initial term of appointment of IE would be for a period of five (5) years or contract period whichever is lesser and may be further renewed on a year-on year basis as may be mutually agreed between the Employer and the Contractor subject to the consent of IE and final approval by the Ministry of Power.</p> <p>iii) It will be mandatory for the IE to visit the site once in every two months to be constantly aware of the ongoing project activities and to have a fair idea of any</p>

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	<p>situation that may lead to disagreement between the parties. Further, additional visits may also be undertaken as and when called upon to address issues of disagreements.</p> <p>iv) Employer or Contractor will not be able to change the IE in any case. In case of adverse finding about IE such as not performing duties or complaints of integrity, that Expert would be dropped by the Ministry from the panel itself and a new Expert would be selected by the Employer and Contractor jointly from the panel for performing the duties of IE.</p> <p>II. Standard Operating Procedure (SOPs) for Independent Engineer (IE)</p> <ul style="list-style-type: none"> i) IE shall act as per the Standard Operating Procedures (SOPs) attached at Annexure-C. ii) Resolution by IE shall commence when the claimant Party submits detailed information as per Standard Format (for Disagreement Case filing attached as Annexure-D) to IE for intervention along with the necessary documentary evidences. Demand for IE intervention will not be admissible without initial documentary evidence. iii) Necessary information sought by IE during the course of investigation shall be provided in a time bound manner by both the Parties and non-compliance of the same shall lead to imposition of penalties, as specified in Special Conditions of Contract (SCC). iv) IE will examine the issue(s) raised by the Parties concerned as mentioned at point number (ii) above by conducting inspections involving field measurements as may be required to further investigate and to also conduct hearing/mediation with both the parties. v) Based on the preliminary hearing of the parties, IE shall prescribe resolution timeline depending upon the number and nature of disagreements subject to a maximum duration of thirty (30) days or within extended timeline under extraordinary circumstances and for reasons to be recorded in writing. vi) There shall not be any conflict of interest and it shall be ensured that IE should not have been engaged for providing any other services to any of the parties i.e.

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	<p>either Employer or Contractor in the last three years. An Undertaking in this regard shall be furnished by the Contractor for the purpose of avoiding any conflict of interest, at the time of bidding and finalization of IE/ Expert.</p> <p>vii) In the event of non-performance of obligations/services by the IEs at any time during the duration of its contract, the Employer and the Contractor, on mutually agreed basis, shall have the right and discretion to terminate IEs contract by giving a termination notice of thirty (30) days to IEs.</p> <p>viii) The role of 'Independent Engineer' under the Contract is an impartial and fair exercise, where the 'Independent Engineer' has to act as a neutral third-party facilitator. The decision of Independent Engineer shall not be binding on the parties unless the parties sign the written settlement agreement and the same is authenticated by IE. Such Settlement agreement would then be binding on the parties and both parties shall implement the same forthwith.</p> <p>III. Terms and Conditions for Payments to 'Independent Engineer' -</p> <p>i) Retainership Fee: A retainer fee, as specified in Special Conditions of Contract (SCC), for 'Independent Engineer for a specific project shall be considered as payment in full for:</p> <ul style="list-style-type: none"> a. being available on a notice of 2 weeks for all site visits and hearings, b. becoming and remaining conversant with all the project developments and maintaining relevant files; c. compensating all office and overhead expenses including secretarial services, photocopying and office supplies incurred in connection with his duties; and <p>The retainer fee of Experts, shall be increased annually by 10%. Further, an Expert, shall not be in the retainership of more than two Hydro power contracts concurrently in Employer's Organization. In case of two contracts, expert shall draw retainership fee limited to one contract only (i.e. the amount</p>

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	<p>specified in Special Conditions of Contract (SCC)). The duration of retainership shall be for such duration as may be mutually decided by the Employer and Contractor but shall not, in any case, extend beyond 3 months after the completion of works as per the contract.</p> <p>The retainership fee shall be shared by the Employer and the Contractor equally but shall initially be paid to the IE by the Employer.</p> <ul style="list-style-type: none"> ii) Site Visit Fee: A daily visiting fee, as specified in Special Conditions of Contract (SCC), to either project site or project office, anywhere in India, limited to a maximum of 10 days in a month for Expert, shall be paid for hearing, preparing reports etc. initially by the Employer. The daily visiting fee of Expert shall be increased on yearly basis @10%. iii) Reimbursement of travel, boarding/lodging expenses incurred by Independent Engineer: The travel, boarding/lodging expenses of the 'Independent Engineer', as per entitlement of Executive Director of Employer, would be made initially by the Employer. If any expert of 'Independent Engineer' does not receive payment of the amount due within 30 days after submitting claim, the expert shall be free to suspend his/her services without notice until the payment is received. iv) Meeting Expenses: All the payments for holding the meeting would be initially borne by the Employer and shall be shared equally by the Employer and Contractor. v) Sharing of Expenses on Independent Engineer: All the payments for holding the meeting, site visits, reimbursement of travel, boarding/lodging expenses and monthly compensation of Independent Engineer' shall be shared equally by both the parties i.e. Employer and Contractor. vi) The Employer shall maintain an account of all the expenses incurred by it on 'Independent Engineer'. <p>Notwithstanding anything contained in any other law for the time being in force, the Independent Engineer and the parties shall keep confidential all matters relating to the Independent Engineer proceedings. Confidentiality</p>

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