



**CHENNAI METROPOLITAN WATER
SUPPLY & SEWERAGE BOARD**



TENDER NO: CMWSSB/CNT/WSS/ICB/JICA/DESAL/CP01/_____/2020-21

**LOAN AGREEMENT NO. ID-P267
JICA FUNDED PROJECT**

REQUEST FOR PROPOSAL DOCUMENT

FOR

**PROJECT FOR CONSTRUCTION OF CHENNAI
SEAWATER DESALINATION PLANT (I)**

PART-III

(CONDITIONS OF CONTRACT AND CONTRACT FORMS)

**PROCUREMENT OF DESIGN/ENGINEERING, CONSTRUCTION,
COMMISSIONING OF 400 MLD SEAWATER REVERSE OSMOSIS (SWRO)
DESALINATION PLANT AT PERUR, CHENNAI WITH 20 YEARS OF
OPERATION AND MAINTENANCE (DBO BASIS)**

INTERNATIONAL COMPETITIVE BIDDING

PROJECT MANAGEMENT CONSULTANTS

SMEC International Pty Ltd.
NJS Engineers India Pvt. Ltd.
Tata Consulting Engineers Ltd.
SMEC India Pvt. Ltd.

**SUPERINTENDING ENGINEER
(CONTRACTS & MONITORING)
CHENNAI METROPOLITAN
WATER SUPPLY & SEWERAGE
BOARD**

Date of Issue of Request of Proposal: xx/xx/xx

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PART 3 – CONDITIONS OF CONTRACT AND CONTRACT FORMS

Section VII. General Conditions (GC)

The Conditions of Contract comprise two parts, this Section VII - General Conditions of Contract (GC) and the following Section VIII- Particular Conditions of Contract.

The GC for the contract shall be the **Conditions of Contract for Design, Build and Operate Projects (First Edition 2008), (FIDIC Gold Book)** prepared by the Fédération Internationale des Ingénieurs- Conseils (FIDIC). A copy of these General Conditions is not attached to these bidding documents / contract and the General Conditions of Contract are available at:

<http://fidic.org/bookshop>

The GC in this Section, read in conjunction with the Particular Conditions in Section VIII and other documents listed therein, should be a complete document expressing all the rights and obligations of the contracting Parties.

Any amendments and additions to the General Conditions, specific to the Contract in hand, has been introduced in the Particular Conditions (PC). A number of such Particular Conditions, applicable to the above Conditions of Contract, are included in Section VIII.

The Particular Conditions take precedence over the General Conditions - see Sub-Clause 1.5, Priority of Documents, in the General Conditions. The PC has Part A and Part B defined below.

Part A, the Contract Data of the PC, includes data to complement GC in a manner similar to the way in which the Bid Data Sheet complements the Instructions to Bidders. Clause numbers in the PC correspond to those in the GC.

Part B, the Specific Provisions of the PC specifies country- or project-specific provisions for PC in each case.

Section VIII. Particular Conditions

Particular Conditions (PC) Part A - Contract Data

The following Particular Conditions of Contract (PC) shall supplement the GC. Whenever there is a conflict the provisions herein shall prevail over those in the GC.

Sub-Clause	Data to be given	Data
1.1.24	Where the Contract allows for Cost Plus Profit, percentage profit to be added to the Cost:	N/A
1.1.26	Cut-Off Date (number of days after the Time for Completion of Design-Build):	As per Sub-Clause 15.2 (h): 182 days after the Time for Completion of Design-Build.
1.1.32	Employer's name and address	Chennai Metropolitan Water Supply and Sewerage Board (CMWSSB) No.1, Pumping Station Road, Chintadripet, Chennai 600 002 Telephone: +91 44-28451300 Ext: 209, Facsimile: +91 44 28458181
1.1.35	Employer's Representative's or Engineer's name and address:	Superintending Engineer (Desal) CMWSSB, No.1, Pumping Station Road, Chintadripet, Chennai 600 002. Assisted by: Team Leader Project Management Consultant SMEC International Pty Ltd, NJS Engineers India Pvt. Ltd., TCE Ltd. & SMEC (India) Pvt. Ltd. Consortium Purva Primus, No 236 Okkiyampettai, Old Mahabalipuram Road, Okkiyam Thuraipakkam, Chennai – 600 097 Ph: +91 44 6697 3300
1.1.70	Parts of the Works that shall be designated a Section for the purposes of the Contract:	<u>Section A - “Design Build Contract” or “Works Contract”:</u> Design, submittals, procurement, Construction, fabrication, installation, testing, trial run and commissioning and process proving of the Plants / Works or components of the Plants / Works, demolition of existing structures (as

Sub-Clause	Data to be given	Data
		<p>required), for a period of 42 Months (36 months of construction work, 3 months of trial run and commissioning period and 3 months for process proving) from Commencement Date as specified in GC Clause no. 8.1</p> <p><u>Section B - "O&M Contract":</u> Operation and Maintenance of the Plants / Works for the Operation Service Period, for a period of 20 Years including one year (365 days) of Defect Liability Period (DLP) from the date of issue of Commissioning Certificate by the Employer's Representative as per provisions of GC Clause No.11.7</p>
1.1.76	Tests on Completion of Design-Build	Test on completion on design-build includes initial performance test of the plant for 15 days (as part of the plant commissioning) followed by process proving test of the plant for 3 consecutive months.
1.1.78	Time for Completion of Design-Build	42 Months
1.3	Agreed methods of electronic transmission	E-mail will be an acceptable form of electronic transmission system, provided a signed hard copy of the entire contents of the E-mail, including any attachments, is received within seven (7) days of the transmission of the e-mail.
1.3	Address of Employer for communications	Chennai Metropolitan Water Supply and Sewerage Board (CMWSSB) No.1, Pumping Station Road, Chintadripet, Chennai 600 002 Telephone: +91 44-28451300 Ext: 209, Facsimile: +91 44 28458181
1.3	Address of Employer's Representative for communications	Superintending Engineer (Desal) Chennai Metropolitan Water Supply and Sewerage Board (CMWSSB) No.1, Pumping Station Road, Chintadripet, Chennai 600 002 Telephone: +91 44-28451300 Ext: 209,

Sub-Clause	Data to be given	Data
		Facsimile: +91 44 28458181
1.3	Address of Contractor for communications	To be determined later
1.4	Contract shall be governed by the law of	The Republic of India and/or Tamil Nadu State
1.4	Ruling language:	English
1.4	Language for communications:	English
2.1	After receiving the Letter of Acceptance, the Contractor shall be given right of access to all or part of the Site within:	14 days from the Commencement Date
4.2	Performance Security (as percentages of the Accepted Contract Amount in Currencies):	<p>The Performance Security shall be furnished in two instalments:</p> <ul style="list-style-type: none"> • The first instalment shall be furnished within 28 days of the receipt of notification of award, in the amount (s) of Ten (10) percent of the Accepted Contract Amount for the Design-Build component excluding the Provisional Sums. • The second instalment shall be furnished within 28 days from the commencement of commissioning period in the amount (s) of Ten (10) percent of the Accepted Contract Amount for the Operation Service period. <p><u>Performance Security:</u></p> <p>a) It shall be denominated in the types and proportions of the currencies in which the Contract Price is payable, or in a freely convertible currency acceptable to the Employer.</p> <p>b) The Performance Security shall be in the form of an unconditional</p>

Sub-Clause	Data to be given	Data
		<p>guarantee and irrevocable from a reputable prime banks in favour of the Managing Director, Chennai Metropolitan Water Supply and Sewerage Board, which may include Scheduled Banks in India, and if the Bank issuing the Performance Security is located outside India, it shall have a corresponding financial institution, which may include Scheduled Banks, in the territory of India to make it enforceable.</p> <p><u>Return of Performance security:</u></p> <ul style="list-style-type: none"> • Section A (Design Build Contract): The Performance Security shall be released to the Contractor after the issue of Commissioning Certificate as per sub-clause 11.7 of GC, but not before the receipt of a separate Performance Security for O&M contract. • Section B (O & M): Performance Security shall be reduced annually pro-rata after adjusting the cost of accepted O&M Contract Amount for previous year.
4.8	Safety Procedures	The Contractor shall submit, within 15 days of signing of the Contract Agreement, the required Safety Plan for the works to be executed.
4.9	Quality Assurance	The Contractor shall submit, within 15 days of signing of the Contract Agreement, the required Quality Assurance and Quality Control (QA/QC) Program.
5.1	Period for notification of errors, faults and other defects is:	60 days from the Commencement Date.
5.2	Contractor's Documents requiring approval:	This may be referred to the Employer's Requirement (as mentioned in Part-II).

Sub-Clause	Data to be given	Data
6.5	Normal working hours on the Site:	<ul style="list-style-type: none"> • Section A (Design Build): All days of the week as deemed fit by the Contractor and approved by the Employer. The normal working hours will be from 08.00 AM to 06.00 PM. The Contractor need to take permission from Employer for working in late hours or holidays as per the statutory requirement. • Section B (O & M): As required to fulfil the contractual obligations - operation and maintenance shall be carried out 24 hours a day, 7 days a week, for all days of the year including national holidays
8.2	Period of the Operation Service	20 Years from the date of issue of Commissioning Certificate.
9.2	Time for Completion of Design-Build:	<p><u>42 Months</u></p> <ul style="list-style-type: none"> • 36 months of construction work, • 3 months of trial run and commissioning period including 15 days of initial performance test, <u>and</u> • 3 months for process proving from Commencement Date as specified in GC Clause No. 8.1.
9.2	Time for Completion of each Section:	<p>Section A - “Design Build Contract” or “Works Contract”: Design, submittals, procurement, Construction, fabrication, installation, testing, trial run and commissioning and process proving of the Plants / Works or components of the Plants / Works, demolition of existing structures (as required), for a period of 42 Months (36 months of construction work, 3 months of trial run and commissioning period and 3 months for process proving) from Commencement Date as specified in GC Clause No. 8.1</p> <p>Section B - “O&M Contract”:</p>

Sub-Clause	Data to be given	Data
		Operation and Maintenance of the Plants / Works for the Operation Service Period, for a period of 20 Years including one year (365 days) of Defect Liability Period (DLP) from the date of issue of Commissioning Certificate by the Employer's Representative as per provisions of GC Clause No.11.7
9.6	Delay damages (percent of final Contract Price per day of delay)	0.01% of the Works Contract Price for each day for each corresponding schedule (for example schedule 1, 2, 3 etc.) as per the corresponding activities depicted in the milestone schedule in Part 2, Section VI, Employer's Requirements. However, the delay damages will be applicable only for percentage of the remaining works.
9.6	Maximum amount of delay damages (percent of final Contract Price):	10% of Works Contract Price for the Design- Build Period.
10.6 a	Maximum compensation payable by Contractor:	10% of the O&M Contract Price for the Operation Service.
10.6 b	Maximum compensation payable by Employer:	10% of the O&M Contract Price for the Operation Service.
10.7	Performance damages:	As specified in Schedule of Guarantees.
10.7	Rights of Employer if failure continues for more than 84 days:	As per Sub-Clause 10.7 (b) (i) and (ii) only
10.7	Minimum production outputs required (give details):	As per Employer's Requirement
13.5	Percentage rate to be applied to Provisional Sums:	5 %
14.2	Amount of Advance Payment (percent of Accepted Contract Amount):	Ten Percent (10%) of the Accepted Contract Amount for Design-Build Works payable in the currencies and proportions in which the Accepted Contract Amount is payable. • The 10% advance is payable in two

Sub-Clause	Data to be given	Data
		<p>equal instalments.</p> <ul style="list-style-type: none"> • The 1st instalment 5% Mobilization Advance to be released after signing of Contract Agreement. • The 2nd instalment of 5% Mobilization advance will be released after meeting all the requirements as specified below: <ul style="list-style-type: none"> (a) Mobilized the approved Construction Project Manager for the Contract. (b) Established and staffed an approved functional design office at Chennai. (c) Mobilized the approved survey and subsoil investigation crews to the Site and commenced the surveys and subsoil investigations. (d) Submitted a list of subcontractors (if any) and their respective agreements for approval of the Employer's Representative. (e) Submitted the proposed "Submission and Anticipated Approval Program" for construction documents for approval of the Employer's Representative. (f) Submitted the proposed construction programme for approval of the Employer's Representative. (g) Submitted, for approval by the Employer's Representative, mobilization/ deployment schedules for: <ul style="list-style-type: none"> i) Contractor's key personnel required for managing,

Sub-Clause	Data to be given	Data
		<p>executing and supervising the Works,</p> <p>ii) Contractor's Plant, Machinery and Equipment required for executing the Works; and</p> <p>iii) Procurement Schedule for major materials and equipment to be incorporated into the Permanent Works.</p> <p>(h) Submitted a Cash Flow Forecast for approval of the Employer's Representative.</p> <p>(i) Submitted details of funds mobilized by himself as per the Cash Flow Forecasts.</p> <p>(j) Submitted a list of proposed quarries, suppliers and manufacturers, along with their credentials, for approval of the Employer's Representative.</p> <p>(k) Actual deployment of: (i) such Personnel, (ii) Machinery and Equipment, as per the approved deployment schedules.</p> <p>(l) Placed confirmed orders for supply of major items of material and equipment which is to be incorporated into the Permanent Works as per the approved procurement schedule.</p> <p>(m) Established the fully furnished Site office(s).</p> <p>(n) Procured initial quantities of structural steel, pipes/plates, cement, steel, shuttering materials, etc., required for executing the civil works in</p>

Sub-Clause	Data to be given	Data
		<p>accordance with the approved schedule.</p> <p>(o) Established and staffed, with qualified personnel a completely equipped testing laboratory at site for quality control purpose.</p> <p>(p) Commenced construction work at the Site in accordance with the approved Construction Program</p>
14.2	Currencies of payment if different to the currencies quoted in the Contract	<p>Local Currency: INR</p> <p>Foreign Currency: USD</p>
14.2	Percentage deductions for the repayment of the Advance Payment:	Each instalment of the mobilization advance shall be repaid to the Employer in 12 (twelve) equal monthly payments
14.3	Percentage of Retention:	5 (Five) % of Interim Payment Certificate
14.3	Limit of Retention Money:	5 (Five) % of Accepted Contract Amount for Design Build Works.
14.6(b)(i)	Plant and Materials for payment when shipped:	In accordance to the payment terms provided at Schedule 2 – Schedule of Payments.
14.6(c)(i)	Plant and Materials for payment when delivered to the Site:	In accordance to the payment terms provided at Schedule 2 – Schedule of Payments.
14.7(b)	Minimum Amount of Interim Payment Certificate:	<p>2.0% (two percent) of the Accepted Contract Amount for Design-Build.</p> <p>No minimum amount of Interim Payment Certificate is applicable for Operation Service.</p>
14.9	Financing charges for delayed payment (per cent points above discount rate):	1 % annually
14.17	Currencies for payment of Contract Price:	<p>Local Currency: INR</p> <p>Foreign Currency: USD</p>
14.17	Proportions of Local and Foreign Currencies are:	Not Applicable

Sub-Clause	Data to be given	Data
14.17	Rate of Exchange	As per RBI notification
14.17	Payment of damages shall be:	Local Currency: INR Foreign Currency: USD
14.19	Amount of Maintenance Retention Fund:	5% of the Accepted Contract Amount for the Operation Service.
17.1(b)(ii) & 17.3(b)(ii)	Fault, error, defect or omission in any element of the design of the Works by the Employer:	All the technical designs of the plant given by the Employer are indicative. The Contractor is required to review the design and make changes as needed before implementing the design.
17.1(b)(iii) & 17.3(b)(iii)	Operation of forces of nature allocated to the Contractor:	None
17.8	Total liability of the Contractor shall not exceed:	The total Accepted Contract Amount i.e., Sum of Accepted Contract Amount for Section A (Design Build Works) and Accepted Contract Amount for Section B (O&M Works).
17.10(b)	Indemnities by the Employer	None
19.2(a)(i)	Permitted deductible limits:	Nil
19.2(a)(ii)	Additional sum to be insured:	As per Sub-Clause 19.2 (a) (ii)
19.2(a)	Amount of Insurance of the Works	100% of the Contract Price.
19.2(a)4	Employer's Risks to be insured if different to Sub-Clause 17.1:	1% of the Works Contract Price.
19.2(a)5	Exceptional Risks to be insured if different to Sub-Clause 18.1:	0.1% of the Works Contract Price.
19.2(b)	Insurance of Contractor's Equipment (amount required):	General Insurance = 2% of the agreed equipment value of the Accepted Contract Amount Earthquake safety = 0.1% of the agreed equipment value of the Accepted Contract Amount Tsunami safety = 0.1% of the agreed equipment value of the Accepted Contract Amount
19.2(c)	Amount of professional liability insurance required:	INR 500 Million

Sub-Clause	Data to be given	Data
19.2(c)	Period for which professional liability insurance required:	Up to 365 days from the issue of Contract Completion Certificate.
19.2(d)	Amount of insurance required for injury to persons and damage to property:	Shall be at least 2% of Contract Price subject to a minimum of INR 5 (five) Million for each occurrence with unlimited occurrences.
19.2(f)	Other insurances required from the Contractor (give details):	None
19.3(a)	Amount of fire extended cover insurance required:	Above ground assets: INR.500 Million Underground assets: INR.50 Million
19.3(d)	Other insurances required by law from the Contractor (give details):	None
19.3(e)	Other optional operational insurances required from the Contractor (give details):	None
20.3	Date for appointment of DAB:	28 days from the Commencement Date.
20.3	The DAB shall comprise:	3 (Three) Members
20.4	Appointing entity (official) for DAB members, if not agreed, shall be the President of FIDIC or a person appointed by him.	One of the members to be appointed by Employer, another member by the Contractor and the third member by mutual consent of Employer and Contractor.
20.8	Language of arbitration:	English
20.8 (a), (b) & (c)	Arbitration	The dispute between the Employer and the Contractor shall be settled by arbitration in accordance with the Arbitration and Conciliation Act, (1996) and amendment thereof, in case of Contractors based in India. In case of International Contractors, the dispute shall be settled under the Rules of Arbitration of the ICC.

Particular Conditions (PC) Part B- Specific Provisions

CLAUSE 1 GENERAL PROVISIONS

Sub Clause 1.1 Definitions

Replace with the following the definition of Sub-Clause 1.1.10 as follows:

- 1.1.10(a) For the purposes of defining the different activities and obligations under the Contract, the Contract will be comprised of a “**Section A - Design-Build Contract or Works Contract**” and an “**Section B - O&M Contract**”, as defined in the following Sub-paragraphs 1.1.10(b) and (c), respectively; such definitions are for convenience only and shall not affect the rights or obligations of the Employer or the Contractor under the Contract.
- 1.1.10(b) “**Design-Build Contract or Works Contract**” means that portion of the Contract that relates to the **design, submittals, procurement, construction, fabrication, installation, testing, trial run, commissioning and process proving of the Works or components of the Works, and the remedying of any defects of the Plants/Works or components of the Plants/Works, demolition of existing structures (as required),** but excluding operation and maintenance, in accordance with the provisions of the Contract.
- 1.1.10(c) “**O & M Contract**” means that portion of the Contract that relates to the **operation and maintenance of the Works for the Operation Service Period,** as defined in the Contract Data, but excluding the Works Contract, in accordance with the provisions of the Contract.

Replace with the following the definition of Sub-Clause 1.1.15 as follows:

- 1.1.15 “Contract Period” means the **Design-Build Period or Works Period** plus the **Operation Service Period or O&M Period.**

Replace with the following the definition of Sub-Clause 1.1.16 as follows:

- 1.1.16(a) “**Contract Price**” means the price as defined in Sub Clause 14.1[*The Contract Price*] and includes the adjustments in accordance with the Contract.

For the purposes of determining payments under the Contract and, where applicable, other obligations, the Contract Price shall be subdivided into a “**Works Contract Price**” and “**O&M Contract Price**”, as defined in the following Sub paragraphs 1.1.16 (b) and

1.1.16 (c), respectively.

The total “**Contract Price**” will be the sum of the Works Contract Price and the O&M Contract Price.

1.1.16(b) “**Works Contract Price**” means that portion of the Contract Price payable to the Contractor for performance of the Design-Build Contract or Works Contract in accordance with the provisions of the Contract. The **Works Contract Price** will be the total of the amounts for carrying out the Works, as set out in Part 1 Price Schedules.

1.1.16(c) “**O&M Contract Price**” means that portion of the Contract Price payable to the Contractor for performance of the O&M Contract in accordance with the provisions of the Contract. The **O&M Contract Price** will be the total amount for operation and maintenance during the O&M period, as set out in Part 1 Price Schedules, under Schedule for Operation and Maintenance.

Replace with the following the definition of Sub-Clause 1.1.35 as follows:

1.1.35 “**Employer’s Representative or Engineer**” means the person or the consultant appointed by the Employer to act as Employer’s Representative or Engineer for the purposes of the Contract and named as such in the Contract Data, or other person appointed from time to time by the Employer and notified as such to the Contractor under Sub-Clause 3.4 [Replacement of the Employer’s Representative].

Replace with the following the definition of Sub-Clause 1.1.57 as follows:

1.1.57 “**Operation Service or O&M**” means the operation and maintenance of the facility as set out in the Operation Management Requirements.

Replace with the following the definition of Sub-Clause 1.1.58 as follows:

1.1.58 “**Operation Service Period or O&M Period**” means the period from the date stated in the Commissioning Certificate as provided for under Sub-Clause 10.2 [Commencement of Operation Service] to the date stated in the Contract Completion Certificate.

Replace with the following the definition of Sub-Clause 1.1.61 as follows:

1.1.61 “**Permanent Works**” means all Civil, Mechanical, Electrical, Instrumentation and Control, and all other allied components necessary for fully functional and operational installations and facilities capable of meeting all performance and other requirements

specified in the Part -2 Employer's Requirement.

Replace with the following the definition of Sub-Clause 1.1.75 as follows:

- 1.1.75 **"Tender"** means the Letter of Tender and all other documents which the Contractor submitted with the Letter of Tender, as incorporated in the Contract. The word tender is synonymous with Bid and their derivatives, Bidder/Tenderer, Bid/Tender, Bidding/Tendering as well as the words Tender Documents and Bid Documents are synonymous, and is used interchangeably in the Contract.

Add the following definitions to Sub-Clause 1.1:

- 1.1.84 **"Facilities"** means the Works executed and completed by the Contractor after trial run including process proving and commissioning, and remedying defects therein in terms of the Contract.
- 1.1.85 **"Operations and Maintenance"** means performance of any and all tasks and provision of any and all things necessary for the safe and efficient functioning of the Works in compliance with all applicable regulations and the O&M Contract. This includes but is not limited to supply of all labour, equipment, materials, fuel and other consumables, and all other necessary things.
- 1.1.86 **"JICA"** means Japan International Cooperation Agency, the institution financing the project.

Sub-Clause 1.5 Priority of Documents

Replace the Sub-Clause 1.5 as follows:

1. The Contract Agreement (including addenda, corrigenda, reply to pre-bid queries, clarifications)
2. The Letter of Acceptance
3. PART III: Particular Conditions of Contract (Part B- Specific Provisions)
4. PART III: Particular Conditions of Contract (Part A- Contract Data)
5. PART III: General Conditions of Contract
6. PART II Employer's Requirement (drawings, specifications, etc.)
7. The Bidder's accepted Price Proposal
8. Bidder's Drawings

9. Completed Technical Schedules
10. Bidder's Technical Proposal and any other documents forming part of the Contract including JICA's concurrence of the Contract
11. Any other documents issued by the Employer before signing the Contract Agreement and forming the part of the Contract.
12. The Form Acknowledgment of Compliance with Guidelines for Procurement under Japanese ODA Loans.

If an ambiguity or discrepancy is found in the documents, the Employer's Representative shall issue any necessary clarification or instruction.

Sub-Clause 1.6 Contract Agreement

Replace the Sub-Clause 1.6 as follows:

A Contract Agreement in the form annexed, shall be executed within 28 days after the Contractor receives the Letter of Acceptance, unless the Parties agree otherwise. The costs of stamp duties and similar charges imposed by the law in connection with entry into the Contract Agreement shall be borne by the Contractor.

The Time period for signing the Contract agreement shall be within 15 working days after receipt of Performance Security under Sub-Clause 4.2 from the successful bidder.

Sub-Clause 1.8 Assignments

Insert at the end of the Sub-Clause 1.8:

Any assignment in terms of Sub-paragraph (b) above shall be subject to the condition that the bank or financial institution will not have any rights under or in relation to the Contract, except to direct that all or any payments that are offered to be made by the Party liable to make such payments be made to the person or to the account designated by the bank or financial institution.

Sub-Clause 1.9 Care and Supply of Documents

Insert at the end of the Sub-Clause 1.9:

Failure to issue such notice by the Employer or the Employer's Representative to the Contractor in respect of any error in the Contractor's Documents shall not in any manner relieve the Contractor of its obligation to ensure the correctness and accuracy of the Contractor's Documents, and their compliance with the requirements of the Contract.

Sub-Clause 1.10: Errors in the Employer's Requirements

Replace the line item (ii) of the Sub-Clause 1.10:

however, there will be no payment to the Contractor of any such Cost incurred as a result of the errors in the Employer's Requirements.

CLAUSE 3 THE EMPLOYER'S REPRESENTATIVE

Sub-Clause 3.1 Employer's representative Duties and Authority

Delete sub-paragraphs 4, 5 & 6 and substitute with the following sub-paragraphs:

Whenever the Employer's representative exercises a specified authority for which the Employer's approval is required, then such exercise of authority shall be valid for the purposes of this Contract only, if it is accompanied by approval from the Employer.

The Employer's Representative shall obtain specific written approval of the Employer before taking any of the following actions under the respective clauses of the Contract:

- (a) determining value, cost, or extension of time under Sub-clause 3.5 [*Determinations*],
- (b) approving Sub-contracting of any part of the Works under Sub-Clause 4.5. [*Nominated Subcontractors*],
- (c) granting an extension of the time for completion under Sub-Clause 9.3 [*Extension of Time for Completion*],
- (d) suspending progress of part or all the Works under Sub-Clause 9.7 [*Suspension of Works*]
- (e) issuing a **Final Contract Completion Certificate** for Completion of the Operations and Maintenance Services under Sub-Clause 8.6 [*Completion of the Operations and Maintenance Services*],
- (f) issuing a variation under Clause 13 [Variations and Adjustments],
- (g) determining the validity of any claims made by the Contractor under Sub-Clause 20.1 [*Contractor's Claims*].

Notwithstanding the obligation to obtain Employer's approval as set out in the preceding paragraph, if, in the sole opinion of the Employer's Representative, an emergency occurs affecting life-safety or the safety of the Works or of adjoining property, the Employer's Representative may, without relieving the Contractor of any of its duties and responsibilities under the Contract, instruct the Contractor to execute all such work or to do all such things as may, in the sole opinion of the

Employer's Representative, be necessary to address the emergency. The Contractor shall forthwith comply with the instructions of the Employer's Representative despite the absence of approval of the Employer. The Employer's Representative shall determine whether the emergency situation was caused by the Contractor's actions or lack thereof or whether it was beyond the Contractor's control and make a recommendation to the Employer regarding extra costs payable to the Contractor, if any, for addressing the emergency situation. The Employer will make the final determination regarding whether or not any additional payments will be made to the Contractor.

Sub-Clause 3.4 Replacement of Employer's Representative

Insert at the end of Sub-Clause 3.4:

The Employer's representative shall serve as an agent or a representative of the Employer. Mere change of the position of the incumbent by reason of transfer, retirement or otherwise shall not be construed as replacement of the Employer's Representative for the purpose of this Contract.

Sub-Clause 3.6 Management Meetings

Insert additional Sub-Clause 3.6:

The Employer's Representative or the Contractor's Representative may require the other to attend a management meeting in order to review the arrangements for future work. The Employer's Representative shall record the business of management meetings and supply copies of the record to those attending the meeting and to the Employer. In the record, responsibilities of any actions to be taken shall be in accordance with the Contract.

Sub-Clause 4.1 Contractor's General Obligations

Replace the first paragraph of Sub-Clause 4.1 with:

The Contractor shall design, execute, complete, test and also operate and maintain the Works in accordance with the Contract, and shall remedy any defects in the Works. When completed the works shall be fit for the purpose for which the works are intended as defined in the Contract. The Works shall be operated and maintained as per terms and conditions of the Contract throughout the period from commissioning of Section A-Design-Build Contracts until the end of Operation Service Period as specified in the Contract Data for Section B- O&M Contract.

Sub-Clause 4.2 Performance Security

Replace the Sub-Clause 4.2 as follows:

The Contractor shall obtain (at his/their cost) a Performance Security for proper performance, in the amount stated in the Contract Data and denominated in the currency (ies) of the Contract or in a freely convertible currency acceptable to the Employer.

The Contractor, within twenty-eight (28) days of the receipt of Letter of acceptance, shall submit an irrevocable and unconditional Performance Security applicable to Section A (Works Contract) as specified in the “Contract Data” for his proper performance of Section A of the Contract, (not withstanding and/or without prejudice to any other provisions in the Contract), in the amount and within the time period stated in the “Contract Data”. This period can be further extended by the Employer up to a maximum period of 5 days on written request of the Contractor stating the reason for delays in procuring the Guarantee to the satisfaction of Employer.

The Contractor shall submit an irrevocable and unconditional Performance Security applicable to Section B (Operation and Maintenance Contract) as specified in “Contract Data” for his proper performance of Section B of the Contract (Operation and Maintenance Contract), (not withstanding and/or without prejudice to any other provisions in the Contract), in the amount and at the time stated in the “Contract Data”.

The Performance Securities shall be in the form of Bank Guarantees from a bank approved by Reserve Bank of India as per the format provided in Sample Forms.

A Letter of Acceptance shall be issued in the first instance informing the Contractor of the decision of the Employer to accept his Bid and the Work Order shall be issued only after the Performance Security in prescribed form is received. In case of failure by the Contractor to furnish Performance Security within the specified period, the Employer shall without prejudice to any other right or remedy available in law, be at liberty to forfeit the Bid Security absolutely and debar the Contractor to participate in the Works, if re-tendered.

The Contractor shall ensure that the Performance Security is valid and enforceable until the Contractor has executed and completed the Works. If the terms of the Performance Security specify its expiry date, and the Contractor has not become entitled to receive the Commissioning Certificate by the date 28 days prior to the expiry date, the Contractor shall extend the validity of the Performance Security until the Works have been completed tested.

The Employer shall not make a claim under the Performance Security, except for amounts to which the Employer is entitled under the Contract.

Without limitation to the provisions of the preceding paragraph, whenever the Employer determines a cumulative addition to the Contract Price as a result of a

change in cost and/or legislation or as a result of a variation more than the Accepted Contract Amount for that Section of the Works, the Contractor, at the written request of the Employer, shall promptly increase the value of the Performance Security applicable to that Section of the Works by an equivalent amount.

If the terms of a Performance Security specify its expiry date, and the Contractor have not become entitled to receive the Contract Completion Certificate following completion of Section B, as applicable, by the date 28-days prior to the expiry date, the Contractor shall extend the validity of the Performance Security until the relevant Section of the Works has been completed and any defects remedied. Prior to making a claim under a Performance Security, the Employer shall, in every case, notify the Contractor stating the nature of the default for which the claim is to be made.”

The Employer shall return the Performance Security for Section A - “Design-Build” Contract to the Contractor after the issue of Commissioning Certificate as per Sub-Clause 11.7 as stated in Contract Data. The Performance Security for O & M Contract shall be reduced annually after adjusting the cost of O&M Works for previous year, as stated in Contract Data.

Sub-Clause 4.4 Subcontractors

Replace with the following the Sub-Clause 4.4 as:

The Contractor shall not subcontract more than 25% (twenty five percent) of the Works Contract Price to a single subcontractor, and any proposed subcontracts shall be subject to the following conditions:

- for all subcontracts, whether proposed in the tender or at a later date, the Contractor shall, in the format provided in Section 6, Technical Schedules (Schedule VII - Sub-Contracting), submit a list of proposed Subcontractors along with their credentials including technical capability, financial capability, and experience in works similar to those which are proposed to be subcontracted;
- the Employer’s Representative will scrutinize the proposals submitted by the Contractor and approval of the Subcontractors will be based on their overall capacity to execute the works proposed to be sub-contracted.
- the prior approval of the Employer’s Representative shall be obtained for all proposed Subcontractors, as well as for the proposed agreement(s) between the Contractor and such proposed Subcontractors; the Contractor shall submit a copy of the proposed agreement between the Contractor and the proposed Subcontractor,

The Contractor shall be responsible for ensuring that no unauthorized subcontractors are permitted to work on any part of the Site. If, at any stage during execution, a subcontractor is found working at the Site without prior approval of the Employer's Representative, then the work being done by that subcontractor shall be stopped, the subcontractor shall be expelled from the Site, and the Employer's Representative will determine what components of the subcontractor's work are acceptable, what components shall be reworked or remedied by the Contractor, and what payment, if any, is payable for the subcontractor's work.

The act of subcontracting any part or component of the Works shall not relieve the Contractor of his overall responsibilities under the Contract. The Contractor shall be responsible for compliance by all Subcontractors with all the provisions of the Contract. The Contractor shall be responsible for the acts or defaults of any Subcontractor, his agents, or employees, as fully as if they were the acts or defaults of the Contractor, his agents, or employees.

In the event that the Employer's Representative determines that any Subcontractor's performance with respect to progress, quality, or Contract compliance is unsatisfactory, then the Contractor will be required to remove such subcontractor from the Site and either undertake the works itself or provide a suitably qualified replacement. If any delays occur as a result, the Contractor will be responsible for taking any necessary actions to make up the lost time, for which no additional payments or extension of time will be granted.

The Contractor shall carry out all Operation and Maintenance of the Works solely by itself or through the JV/Consortium member having expertise and qualification of O&M as called in the Contract Agreement.

Sub-Clause 4.8 Safety Procedures

Insert the following paragraph at the end of Sub-Clause 4.8:

The Contractor shall submit, within 15 days of signing of the Contract Agreement, the required Safety Plan developed in accordance with the requirements set out in PART-II Employer's Requirements for approval by the Employer's Representative. The Employer's Representative will either approve the submittal or provide comments thereon to the Contractor within 14 days of submission by the Contractor. The Employer's Representative's, approval, disapproval, comments, or failure to provide any of these to the Contractor, shall in no way relieve the Contractor of any of its obligations or responsibilities under the Contract.

Sub-Clause 4.9 Quality Assurance

Insert the following paragraphs at the end of Sub-Clause 4.9:

The Contractor shall, prior to commencement of Permanent Works on Site, establish his own laboratory on the Site, with prior notification to the Employer's Representative. Calibration of the laboratory equipment and instruments shall be certified by agencies approved by the Employer's Representative. Laboratory equipment shall be properly maintained and calibrated throughout the period of the Contract by the Contractor at his own expense. The Contractor shall give the Employer's Representative at least 24-hours' advance notice prior to conducting any tests on Materials and work. The Employer's Representative shall also inspect the laboratory if deemed necessary and the Contractor shall provide adequate facilities to the Employer's Representative and Employer's representatives for his independent verification of the accuracy and adequacy of the facilities. The list of mandatory laboratory equipment to be provided at Site by the Contractor shall be as indicated in the Employer's Requirements.

The Contractor shall submit, within 15 days of signing of the Contract Agreement, the required Quality Assurance and Quality Control (QA/QC) Program for approval by the Employer's Representative. The Employer's Representative will either approve the submittal or provide comments thereon to the Contractor within 14 days of submission by the Contractor. The Employer's Representative's, approval, disapproval, comments, or failure to provide any of these to the Contractor, shall in no way relieve the Contractor of any of its obligations or responsibilities under the Contract.

Sub-Clause 4.12 Unforeseeable Physical Conditions

Replace paragraphs 4 & 5 and Delete paragraph 6 of Sub-Clause 4.12:

If and to the extent that the Contractor encounters physical conditions which are Unforeseeable, gives such a Notice, and suffers delay due to these conditions, the Contractor shall be entitled subject to Sub-Clause 20.1 [Contractor's Claims] to:

(a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 9.3 [Extension of Time for Completion of Design-Build];

After receiving such Notice and inspecting and/or investigating these physical conditions, the Employer's Representative shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine (i) whether and (if so) to what extent these physical conditions were Unforeseeable, and (ii) the matters described in subparagraph (a) above.

Sub-Clause 4.17 Contractor's Equipment

Insert the following paragraph at the end of Sub-Clause 4.17:

The Contractor shall submit, within 15 days of signing the Contract Agreement, the proposed Deployment Program for all necessary Equipment, Plant, and

Machinery to be used for construction, for approval by the Employer's Representative. Such Deployment Program shall be developed using normally available commercial project management software and shall show equipment, plant, and machinery at micro level detail, along with Bar charts, essential for systematic and professional management of all construction works. The Employer's Representative will either approve the submittal or provide comments thereon to the Contractor within 14 days of submission by the Contractor. The Employer's Representative's, approval, disapproval, comments, or failure to provide any of these to the Contractor, shall in no way relieve the Contractor of any of its obligations or responsibilities under the Contract.

Sub-Clause 4.20 Employer's Equipment and Free-Issue Material

Replace the Sub-Clause 4.20 with the following:

Employer does not have provision for any Employer's equipment or Free Issue Material.

Sub-Clause 4.23 Contractor's Operations on Site

Insert the following to the end of Sub-Clause 4.23:

The Contractor may retain on Site, throughout the period of Operation and Maintenance, only such Contractor's Equipment, Temporary Works and material as are required for Operation and Maintenance and the rectification of defects by obtaining prior permission from the Employer.

Sub-Clause 4.24 Fossils

Insert the following next to the first paragraph of the Sub-Clause 4.24:

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

CLAUSE 5 DESIGN

Sub-Clause 5.1 General Design Obligations

Replace the first paragraph of Sub-Clause 5.1 with following:

The Contractor shall carry out, and be responsible for, the design of the works, including any site surveys, topography, bathymetric study, seabed profile and seawater analysis for intake and outfall positions, subsoil investigations, materials

testing and all other things necessary for proper planning and plant design. Design shall be prepared by qualified designers who are engineers or other professionals who comply with the criteria (if any) stated in the Employer's Requirements. Unless otherwise stated in the Contract, the Contractor shall submit to the Employer's Representative for consent the name and particulars of each proposed designer and design Subcontractor.

Insert the following to the end of Sub-Clause 5.1:

The Contractor shall establish a design liaison office at Chennai preferably near the project site within 30 days from the Commencement Date to facilitate preparation and submission of designs, drawings, construction documents, etc., for review and approval by the Employer's Representative. The design liaison office shall preferably be located near the Employer's office to facilitate communications and frequent interactions with the Employer's Representative and the Employer. The Contractor shall provide full-time design staff and continuously maintain the design liaison office at Chennai until such time as all necessary designs and Construction Documents have been completed, reviewed, and approved by the Employer's Representative.

The Contractor will be fully responsible for ensuring that its designs, drawings, and construction documents satisfy all requirements for constructing Works that are complete and fully functional in all respects.

Sub-Clause 5.2 Contractor's Documents

Replace the first sentence of the third paragraph of Sub-Clause 5.2 with the following:

Contractor's Documents shall be submitted to the Employer's Representative as per the Employer's Requirement for review prior to the procurement, installation and/or commencement of construction of the works. These Contractor's Documents shall be submitted accordingly, together with a Notice as described below.

Add the following sentence at the end of Sub-Clause 5.2:

The Contractor is responsible for the correctness of the Contractor's Documents. Any delay in the project progress due to more than one submission of the revised incorrect or inapt documents to the Employer's Representative for review will subject to Employer's Claim as per Sub-Clause 20.2 and Sub-Clause 8.5.

CLAUSE 6 STAFF AND LABOUR

Sub-Clause 6.5 Working Hours

Insert the following to the end of Sub-Clause 6.5:

The above applies to the Works Contract. For the O&M Contract, working hours shall be 24 hours per day, every day of every year during the O&M Period.

Sub-Clause 6.7 Health and Safety

Insert the following after the first paragraph to the Sub-Clause 6.5:

In the event of any outbreak of illness of an epidemic nature, the Contractor shall comply with and/or carry out all such regulations, orders, and/or requirements as may be applicable, including those imposed by various governments and the local medical or sanitary authorities. All expenditure related with the epidemic shall be covered under the Contract Price. The Contractor shall ensure to allocate sufficient resources to the project to avoid any project delay due to such epidemic situation.

Sub-Clause 6.8 Contractor's Superintendence

Insert the following to the end of Sub-Clause 6.8:

The Contractor shall submit, within 15 days of signing the Contract Agreement, the proposed Deployment Program for all key personnel for superintendence of Works under Section-A for approval by the Employer's Representative. Such Deployment Program shall show details of qualifications and experiences of the key personnel which are essential for the proper superintendence and systematic and professional management and implementation of the Works under Section A. The Employer's Representative will either approve the submittal or provide comments thereon to the Contractor within 14 days of the submission by the Contractor.

None of the Contractor's key personnel shall be withdrawn from the Works without due notice being given to the Employer's Representative. Further, no such withdrawals shall be made if in the sole opinion of Employer's Representative, such withdrawals will jeopardize the progress and timely, successful completion of the Works.

Contractor shall appoint a Planning Engineer at Project Site with computer having MS Project / Primavera and AutoCAD facility. The role and purpose of the Planning Engineer shall be mainly to maintain weekly reporting to the Employer (besides Monthly Progress Reports) on an approved format of the Employer through e-mail facility kept by the Contractor at site. Also, CAD drafting facility is required to incorporate necessary details/variation on drawings or the As-Built Drawings time-to-time during construction process and to avoid any discrepancies therein.

Sub-Clause 6.10 Records of Contractor's Personnel and Equipment

Add the following to the end of Sub-Clause 6.10:

Submission of Fortnightly Record of Labour: The Contractor shall submit by the 4th and 19th of every month, to the Employer's Representative a true statement showing in respect of the second half of the preceding month and the first half of the current month respectively:

- i. The number and types of staffs/labourers employed by him on different work units,
- ii. Their working hours,

Sub-Clause 6.11 Disorderly Conduct

Add the following to the end of Sub-Clause 6.11:

The Contractor shall advise his personnel and the sub-contractors to behave decently and respectfully with the Employer's personnel and Employer's Representatives and provide all the information as needed by them. In case there is a complaint of behavioural issue against any Contractor's personnel and/or the sub-contractors at site from the Employer's Representative, the Contractor shall first immediately remove that personnel or the sub-contractor from the site and then discuss with the Employer's Representative about the issue. In case an FIR is required to be lodged against any Contractor's personnel, the Contractor shall do that with the consent of the Employer's Representative.

Labour Disputes: In case of any unpaid claims of labour or any charges against the Contractor approved by the Labour Commissioner and directions given to the Employer by the Labour Commissioner for deduction of the same, the Employer shall have the full authority to deduct the same from the dues of the Contractor.

Insert the following as Sub-Clause 6.12 Foreign Staff and Labour

The Contractor may import such personnel as are required to execute the Works. The Contractor must ensure that all such personnel are provided with or otherwise obtain the required visas and work permits and comply with all legal requirements. The Contractor shall be responsible for all personnel who are foreign nationals for the duration of their engagement with the Contractor in connection with this Contract, and shall also be responsible for ensuring the return of such personnel at the end of the engagement to their previous engagement or domicile in or outside India.

Insert the following as Sub-Clause 6.13 Measures against Insect & Pest Nuisance

The Contractor shall at all times take the necessary precautions to protect all staff and labor employed on the Site from insect and pest nuisance, and to reduce the

dangers to public health and the general nuisance occasioned by the same. The Contractor shall provide its staff and labor with suitable prophylactics for the prevention of malaria and dengue fever and take steps to prevent the formation of stagnant pools of water. The Contractor shall comply with all the regulations of the local health authorities and shall arrange to spray thoroughly with approved insecticide all buildings erected on the Site. Such treatment shall be carried out at least once a year or as needed and instructed by such authorities.

Insert the following as Sub-Clause 6.14 Alcoholic Liquors or Drugs

The Contractor shall not, other than in accordance with the Statutes, Ordinances, Government Regulations, or orders that may be in effect from time to time, import, sell, give, barter, or otherwise dispose of any alcoholic liquor or drugs, or permit or suffer any such importation, sale, gift, barter, or disposal by his Subcontractors, agents, staff, or labourers.

The Contractor shall ensure that there is no event of alcoholic liquor or drug consumption by his personnel and/or the sub-contractors' personnel/ labor at the project site

Insert the following as Sub-Clause 6.15 Arms and Ammunition

The Contractor shall not give, barter, or otherwise dispose of any arms or ammunition of any kind or permit or suffer any such gift, barter or disposal by his subcontractors, agents, staff, or labourers.

Insert the following as Sub-Clause 6.16 Festivals and Religious Customs

The Contractor shall in all dealings with his staff and labor show due regard for all recognized festivals, days of rest, and religious or other customs.”

Insert the following as Sub-Clause 6.17 Funeral Arrangements

The Contractor shall be responsible, to the extent required by local regulations, for making any funeral arrangements for any of his local employees who may die while engaged upon the Works.

Insert the following as Sub-Clause 6.18 Forced Labourer

The Contractor shall not employ forced labourer, which consists of any work or service, not voluntarily performed, that is exacted from an individual under threat of force or penalty, and includes any kind of involuntary or compulsory labourer, such as involuntary prison labourer, indentured labourer, bonded labourer or similar labourer contracting arrangements.

Insert the following as Sub-Clause 6.19 Child Labourer

The Contractor shall not employ any child to perform any work, including work that is economically exploitative, or is likely to be hazardous to, or to interfere with, the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral, or social development. "Child" means a child below the statutory minimum age specified under applicable national laws. The contractor shall put in place a procedure to verify the ages of young workers.

Insert the following as Sub-Clause 6.20 Non-Discrimination and Equal Opportunity

The Contractor shall not make employment decisions on the basis of personal characteristics unrelated to inherent job requirements. The Contractor shall base the employment relationship on the principle of equal opportunity and fair treatment, and shall not discriminate with respect to aspects of the employment relationship, including recruitment and hiring, compensation (including wages and benefits), working conditions and terms of employment, access to training, promotion, termination of employment or retirement, and discipline. In countries where the relevant labor laws provide for non-discrimination in employment, the Contractor shall comply with such laws. When the relevant labor laws are silent on non-discrimination in employment, the Contractor shall meet this Sub-Clause's requirements. Special measures of protection or assistance to remedy past discrimination or selection for a particular job based on the inherent requirements of the job shall not be deemed discrimination.

Insert the following as Sub-Clause 6.21 Compliance with JICA's Safety Policy

The Contractor shall, during the entire Contract Period comply with the Safety Policy for Construction Works as prescribed by JICA. The Policy is available at

https://www.jica.go.jp/english/our_work/types_of_assistance/oda.html

The Contractor shall allocate a budget for compliance with these measures, requirements and actions.

CLAUSE 7 PLANT, MATERIALS, AND WORKMANSHIP

Sub-Clause 7.1 Manner of Execution

Add the following to the end of Sub-Clause 7.1

The Contractor shall submit, within 30 (thirty) days of signing the Contract Agreement, the proposed Procurement Program for all necessary Equipment, Plant, and Materials (including but not limited to Pumps, Motors, Compressor, Surge Vessels, Piping, Electrical Equipment, Structural Steel, Cement, Reinforcement Steel, Fuels, Lubricants, Spare Parts, etc.) to be incorporated into the Works for approval by the Employer's Representative. Such Procurement Program shall be developed using a normally available commercial project

management software and shall show detailed planning and scheduling for placing of orders, inspections by the Contractor, Employer's Representative, Employer, and/or Third Party Agencies, as applicable, and transportation plans and delivery schedules for all Equipment, Plant, and Materials to be incorporated into the Works as essential for systematic and professional management of all construction works. The Employer's Representative will either approve the submittal or provide comments thereon to the Contractor within 14 days of submission by the Contractor. The Employer's Representative's, approval, disapproval, comments, or failure to provide any of these to the Contractor, shall in no way relieve the Contractor of any of its obligations or responsibilities under the Contract.

Sub-Clause 7.3 Inspection

Add the following as item (d) after item (c) of Sub-clause 7.3:

(d) During the O&M Period, be entitled to examine, inspect, measure, and test the quality, and to check the progress of Operation and Maintenance Works.

Sub-Clause 7.4 Testing

Replace the first paragraph of Sub-clause 7.4 as follows:

This Sub-Clause shall apply to all tests specified in the Contract including the Process Proving test of 3 months period.

CLAUSE 8 COMMENCEMENT DATE, COMPLETION AND PROGRAMME

Sub-Clause 8.3 Programme

Replace the 1st paragraph of Sub-Clause 8.3 with the following:

The Contractor shall submit a detailed time programme indicating all sections of works as per the Milestones given in the Employer's Requirements to the Employer's Representative within 28 days after receiving the Notice under Sub-Clause 8.1 [Commencement Date]. The Contractor shall also submit a revised programme whenever the previous programme is inconsistent with actual progress or with the Contractor's obligations. Each programme shall include:

Add the following to the end of Sub-Clause 8.3

The Contractor shall ensure to revise the programme or section of the programme every time it fails to comply with the agreed Milestone, to accelerate the work progress in order to complete each section of works as per the Milestone schedule. The delay in completion of any section of the works shall be liable for the Employer's Claim for the delay damage as per Sub-Clause 8.5.

Sub-Clause 8.5 Delay Damages

Add the following before the 1st paragraph of Sub-Clause 8.5:

Delay damages will be linked to the Milestone given in the Employer's Requirements and the first Project Schedule prepared by the Contractor based on the Milestone and mutually agreed by both parties, the Employer & the Contractor.

CLAUSE 9 DESIGN-BUILD

Sub-Clause 9.5 Rate of Progress

Add the following to the end of Sub-Clause 9.5

The Contractor shall endeavour to advise the Employer in advance of any known or probable future events or circumstances which might adversely affect progress. The Employer may require the Contractor to submit an estimate of the anticipated effect of the future events or circumstances, and/or a proposal under Sub-Clause 13.3 [Variation Procedure].

CLAUSE 11 TESTS

Sub-Clause 11.1 Testing of the Works

Add the following items (d) & (e) to the end of third paragraph of Sub-Clause 11.1:

- (d) Initial Performance Test, which shall demonstrate the performance of the complete Design-Build Works in accordance with the Contract producing the required quality and quantity of the product water consistent for 15 consecutive days.
- (e) Process Proving Test, which shall demonstrate the consistent performance of the complete plant including the intake system, pre-treatment system, RO system and post treatment system along with allied units/processes in accordance with the Contract for 3 consecutive months. The consumption of chemicals, power, spare parts and the events of any operational issue and CIP cleaning and restoration of the RO membrane performance shall be checked as per the Contract during this test.

Replace with the following the 6th Paragraph of Sub-Clause 11.1:

Trial operation shall not constitute a commencement of the Operation Service under Sub-Clause 10.2 [Commencement of Operation Service]. Unless otherwise stated in the Particular Conditions, any product produced by the Works during trial operation and process proving shall be the property of the Employer. Commissioning Certificate shall be issued after the successful completion of the Process Proving test to be conducted by the Contractor for consecutive 3 months as stated in Part-2 – Particular Process Requirements. Unless otherwise stated in the Employer's Requirements, all costs for executing the above tests shall be borne by the Contractor.

CLAUSE 12 DEFECTS

Sub-Clause 12.7 Completion of Operation Service

Add the following as new Sub-Clause 12.7:

In order that the Works shall be as per the condition required by the Contract at the end of the Operation Service Period and be handed over to the Employer in good operating condition (fair wear and tear excepted), the Contractor shall:

- a) ensure that all components of the Works are fully functional and in good operating condition, suitable for the purposes for which they are intended.
- b) ensure that all defects or damages which may have arisen from the design, workmanship, materials, or Operation and Maintenance, have been identified and remedied.
- c) provide replacements for all spare parts that were used/consumed during the Operations and Maintenance Period; all such replacements shall be new and manufacturer's original equipment only for the period as in the contract.
- d) execute all required work of amendment, reconstruction, repair, and remedying of defects and damage per instructions of the Employer or Employer's Representative.
- e) ensure that all mechanical and electrical equipment and items are cleaned and painted as per the provision of the contract.
- f) ensure that all civil works are cleaned, leak proofed and whitewashed and all road and pathways are freshly repaired and are brought to new condition.
- g) ensure that all machines, equipment, testing devices and items in the workshops are in excellent working condition as per the contract, and
- h) ensure that all site preparation, mulching, planting, grassing, irrigation and landscaping are well maintained.

All such work shall be executed by the Contractor at his own cost before handing over the entire Plant and Works to the Employer. In the event that the Contractor fails to carry out the necessary remedial works, the Employer's Representative shall notify the Contractor, and proceed in accordance with the provisions of Sub-Clause 11.4 (a) and (b). Any costs incurred by the Employer in so doing shall be recoverable from the Contractor and will become a debt due and payable by the Contractor to the Employer and the Employer may, at his sole discretion, recover such amount by invoking the Contractor's bank guarantee provided as Performance Security.

The Contract shall not be considered to be completed until the Contract Completion Certificate has been signed by the Employer's Representative and delivered to the Contractor, stating the date upon which the Contractor has completed his operation and maintenance obligations to the satisfaction of the Employer's Representative and the Employer. The Contract Completion Certificate shall be given by the Employer's Representative within 28 days after the end of the Operation Service Period, or as soon after such date as the Contractor has completed his obligations.

Only the Contract Completion Certificate shall be deemed to constitute final certification that the Contractor has satisfactorily fulfilled all of his obligations under the Contract.

CLAUSE 13 VARIATIONS AND ADJUSTMENTS

Sub-Clause 13.3 Variation Procedure

Add the following to the end of Sub-Clause 13.3:

The pricing of any variation shall, as far as practicable be calculated in accordance with the rates and prices included in the Contract. However, if such rates and prices are inequitable or for items which are not covered in price schedule then its cost/price shall be calculated as per the latest schedule of rates (SOR) or on the basis of market rate if not covered in SOR. However, no escalation shall be paid on such items

Sub-Clause 13.8 Adjustment for Changes in Cost

Replace the Sub-Clause 13.8 with the following:

Work which is carried out during First Year (365 days) of the Works Contract Period will be carried out at the base rates and prices in accordance with the payment Schedule, and will not be subject to any adjustment for rises or falls in the cost of labor, equipment, plant, materials or other inputs to the Works. Increases or decreases in the cost of such inputs shall be adjusted on a monthly basis thereafter for the remaining works.

Price Adjustment shall be applicable for Works (Design-Built) Contract and Operation and Maintenance Contract. This clause is operative both ways, i.e. if the Price Adjustment as calculated is on the plus side, payments on account of the Price Adjustments shall be allowed to the Contractor and if it is on the negative side, the Employer shall be entitled to recover the same from the Contractor and the amount shall be deductible from any amounts due and payable under the Contract.

In this Sub-Clause, "Table of Adjustment Data" means the completed table of

Changes in adjustment data included in the Schedules.

A) Price Adjustment Formula for Works Contract

Adjustment Formula: The amount to be added to or deducted from the Interim Payment Certificates for changes in cost and legislation shall be determined from the formulae. The formulae will be of the following general type:

$$P_n = a + b \frac{L_n}{L_o} + c \frac{C_n}{C_o} + d \frac{S_n}{S_o} + e \frac{F_n}{F_o} + etc. ...$$

Where:

“P_n” is the adjustment factor to be applied to the payment for the Design-Build Works carried out in month “n”;

“a” is a fixed coefficient, representing the non-adjustment portion;

“b”, “c”, “d”, “f”, etc., are coefficients representing the estimated proportion of each cost element (Labor (L), Chemicals (C), Steel (S), Fuels and lubricants (F), etc.) in the Operation and maintenance of the plant , as specified below;

“L_n”, “C_n”, “S_n”, “F_n”, etc., are the current cost indices or reference prices for month “n” to which the particular Interim Payment Certificate is related;

“L_o”, “C_o”, “S_o”, “F_o”, etc., are the base cost indices or reference prices corresponding to the above cost elements, on the Base Date as defined in the Section below.

Range of weightage of any other items shall be adjusted with the consent of the Employer’s Representative.

The following percentages will govern the price adjustment for the entire works contract:

For Works Contract

Coefficients	Description of Coefficient	Range of Weightings %	Weightings %: Bidders to Specify below
a	Fixed Coefficient	15	15

b	Labour	15 - 30	
c	Cement	15 - 30	
d	Steel	15 - 25	
e	Fuel and Lubricants	5 - 10	
	Total		100

Sources of Indices: The sources of the indices shall be as follows:

Type of Index	Source
Cost Index for Labour	The consumer price index for industrial workers as published by the Reserve Bank of India, Table No. 36 for Chennai (Base 2012 = 100)
Cost Index for Cement & Steel	The average wholesale price index for Cement and Steel, as published by the Reserve Bank of India, Table No. 39 for India (Base 2004-05 = 100)
Cost Index Fuels and Lubricants	The average wholesale price index for Fuel, and lubricants, as published by the Reserve Bank of India, Table No. 39 for India (Base 2004-05 = 100)

B Price Adjustment Formula for O&M Contract

The amount payable to the Contractor and valued at base prices in accordance

with the payment Schedule shall be adjusted for rises or falls in the cost of Labor, Chemicals, Fuels and other inputs to the Operation and Maintenance of the Plant, by the addition or deduction of the amounts determined by the formulae prescribed in this Sub-Clause. To the extent that full compensation for any rise or fall in costs to the Contractor during Operation and Maintenance is not covered by the provisions of this or any other clause in the Contract, the O & M Contract Price shall be determined to include amounts to cover the contingency of such other rise or fall in costs.

Adjustment Formula: The amount to be added to or deducted from the Interim Payment Certificates for changes in cost and legislation shall be determined from the formulae. The formulae will be of the following general type:

$$P_n = a + b \frac{L_n}{L_o} + c \frac{C_n}{C_o} + d \frac{F_n}{F_o} + etc. ...$$

Where:

“P_n” is the adjustment factor to be applied to the payment for Operation and Maintenance of the Plant carried out in month “n”;

“a” is a fixed coefficient, representing the non-adjustment portion;

“b”, “c”, “d”, etc., are coefficients representing the estimated proportion of each cost element (Labor (L), Chemicals (C), Fuels & Lubricants (F), etc.) in the Operation and maintenance of the plant , as specified below;

“L_n”, “C_n”, “F_n”, etc., are the current cost indices or reference prices for month “n” to which the particular Interim Payment Certificate is related;

“L_o”, “C_o”, “F_o”, etc., are the base cost indices or reference prices corresponding to the above cost elements, on the Base Date as defined in the Section below.

Range of weightage of any other items shall be adjusted with the consent of the Employer’s Representative.

The source of indices shall be those listed in the subsequent sub paragraphs.

Sources of Indices: The sources of the indices shall be as follows:

Type of Index	Source
Cost Index for Labour	The consumer price index for industrial workers as published by the Reserve Bank of India ,

	Table No. 36 for Chennai (Base 2012 = 100)
Cost Index for Chemicals	The average wholesale price index for Basic Heavy Inorganic Chemicals, as published by the Reserve Bank of India, Table No. 39 for India (Base 2004-05 = 100)
Cost Index Fuels and Lubricants	The average whole sale price index for Fuel, power, light and lubricants, as published by the Reserve Bank of India, Table No. 39 for India (Base 2004-05 = 100)

Weighting and Adjustment Factors: The weightings (coefficients) for each of the factors of cost, shall be as follows:

For O&M Contract

Co-efficient	Description of Co-efficient	Range of Weightings %	Weightings% (Bidders to Specify below)
a	Fixed Co-efficient	20	20
b	Labour	20 - 30	
c	Chemicals	40 - 50	
d	Fuel	10	
		Total	100

The weightings shall be adjusted if, in the opinion of the Employer's Representative, the weightings are rendered unreasonable, unbalanced, or

inapplicable as the result of changes in the methods of performance of Operation and Maintenance of the plant and or for any other reason. The decision of the Employer's Representative shall be final and binding on the Contractor.

C) Price Adjustment for the foreign currency portion of the Contract

The price adjustment for the foreign currency portion shall be as per the table given above. Schedule of Adjustment of Foreign currency to be indicated by the Bidders in their proposal.

Contractor may be required by the Employer to justify, to the Employer's satisfaction, their foreign currency requirement and to substantiate that the amounts included in the unit rates and prices and shown in the Schedule of adjustments data are reasonable, in which case a detailed breakdown of the foreign currency requirement shall be provided by Contractor.

In cases where the "currency of index" is not the relevant currency of payment, each index shall be converted into the relevant currency of payment at the selling rate, established by the central bank of the Country, of this relevant currency on the above date for which the index is required to be applicable.

If the Contractor fails to complete the Works within the time for completion of the Contract, adjustment of prices thereafter shall be made using either (i) each index or price applicable on the date 49 days prior to the expiry of the Time for Completion of the Works, or (ii) the current index or price: whichever is more favourable to the Employer.

The weightings (coefficients) for each of the factors of cost stated in the table(s) of adjustment data shall be adjusted if they have been rendered unreasonable, unbalanced or inapplicable, as a result of Variations.

CLAUSE 14 CONTRACT PRICE AND PAYMENT

Sub-Clause 14.1 The Contract Price

Insert the following paragraphs at the end of Sub-Clause 14.1:

- a) Payment for the Works shall be made on a lump sum basis according to the following major work categories as set out in the Schedule of Prices and/or as proposed by the Contractor and approved by the Employer's Representative:
 - i. Design and documentation, including all necessary designs and documentation required for the Works;

- ii. Civil works, installation, testing, commissioning and other services required for the different plant components in accordance with the payment units as set out in the Schedule of Prices and/or as proposed by the Contractor and approved by the Employer's Representative;
 - iii. Mechanical Plant and equipment, whether manufactured or fabricated outside or within the Employer's country, including supply, installation and commissioning/testing of all electro-mechanical works, for different plant components according to the payment units;
 - iv. Electrical Plant and equipment including Instrumentation, Control and Automation, whether manufactured or fabricated outside or within the Employer's country, including supply, installation and commissioning/testing of all electrical and ICA works, for different plant components according to the payment units;
 - v. Process Proving Test after commissioning and initial performance test.
 - vi. Laboratory Equipment and items
 - vii. Operation Service of the constructed facilities after completion and acceptance of Section A of the Works.
- b) The Contract Price shall be adjusted for changes in the cost of labour, equipment materials, chemicals and fuels & lubricants in accordance with the provisions of Sub-Clauses 13.6 [*Adjustments for Changes in Legislation*] and 13.8 [*Adjustments for Changes in Cost*];
- c) The Contractor shall pay all the taxes, duties, and fees required to be paid by him under the Contract, and the Contract Price shall not be adjusted for any of these costs, except as stated in Sub-Clause 13.7 [*Adjustments for Changes in Legislation*];
- d) any quantities, which may be set out in a Schedule are estimated quantities and are not to be taken as the actual and correct quantities of the Works to be executed by the Contractor in fulfilment of his obligations under the Contract;
- e) Bidders are required to submit detailed price break-ups including quantities, unit rates, all applicable taxes (direct or indirect) and other pricing information which may be useful for the assessment and subsequent detailing for interim payments.

The Employer shall be authorized to inspect the statements of account as and when it so desires. It may be noted that the project has first right to the funds released by the Employer.

Sub-Clause 14.3 Application for Advance and Interim Payment Certificates

Replace Sub-Clause 14.3 with the following Sub-Clauses 14.3.1 and 14.3.2:

Sub Clause 14.3.1 Application for Interim Payment Certificates for Design-Build Works

The Contractor shall submit a statement in two copies to the Employer's Representative after the end of each month in a form approved by the Employer's Representative, showing the amounts to which, the Contractor considers himself to be entitled together with supporting documents which shall include the detailed report of progress during the month in accordance with Sub-Clause 4.21 [Progress Reports]. In case of supplied plant and equipment, inspection and testing clearance certificates shall also be enclosed as support documents. The statement shall include the following items, as applicable, which shall be expressed in the various currencies in which the Contract Price is payable, in the sequence listed:

- a) the estimated contract value, at base rates and prices, of the Construction Documents produced and the Works (including variations) executed and Plants, equipment, Machineries and materials (intended for the works) supplied up to the end of the month.
- b) any amounts to be added and deducted for changes in legislation and Adjustments in cost in accordance with Sub-Clauses 13.7 [Adjustments for Changes in Legislation] and 13.8 [Adjustments for Changes in Cost];
- c) any amount to be deducted for retention, calculated by applying the percentage of retention stated in the Contract Data to the total of the above amounts, until the amount so retained by the Employer reaches the limit of Retention Money (if any) stated in the Contract Data;
- d) any amounts to be added and deducted for the advance payments and repayments in accordance with Sub-Clause 14.2 [Advance Payment];
- e) any amounts to be added or deducted for Plant and Materials in accordance with Sub-Clause 14.6 [Payment for Plants and Materials Intended for the Works];
- f) any other additions or deductions which may have become due in accordance with the Contract (including those under Clause 20 – Claims, Disputes and Arbitration), other than under Sub-Clause 8.7 [Delay Damages]; and
- g) the deduction of the amounts certified in all previous Interim Payment Certificates.

Sub-Clause 14.3.2 “Application for Interim Payment Certificates for Operation and Maintenance”

The Contractor shall submit a statement in two copies to the Employer’s Representative after the end of each month, in a form approved by the Employer’s Representative, showing the amounts to which, the Contractor considers himself to be entitled together with supporting documents. The Statement shall include the following items as applicable:

- a) the estimated contract value of the Operation Services of the facilities up to the end of the month;
- b) any amount to be added or deducted for changes in legislation and cost in accordance with Sub-Clause 13.6 and 13.8;
- c) any other additions or deductions which may have become due in accordance with the Contract (including those under Clause 20– Claims, Disputes and Arbitration), other than under Sub-Clause 8.5 [Delay Damages]; and
- d) the deduction of the amounts certified in all previous Interim Payment Certificates.”

Sub-Clause 14.4 Schedule of Payments (TO BE REVIEWED)

Add the following at the end of Sub-Clause 14.4:

Payment Schedule shall be regulated as under:

The designation “P” means progressive monthly payments up to the limits indicated, based on the progress made by the Contractor. The designation “LS” means that lump sum payment is made upon completion of the activity described.

Payment Schedule (Reference to Sub-Clause 14.4 of the Particular Conditions of Contract)				
Major Work Category	Type of Payment	Payment (in % of Total Price)	Amount	Cumulative %
Design, Drawings and Documentation (Schedule 1)	LS	100 %		
Mechanical, Electrical and Instrumentation, Control & Automation Plant, Equipment and Machinery for Incorporation in the Permanent Works (Fabrication, Supply and Transportation) (Schedule 2)				
Plant, Equipment and Machinery (Fabrication, Supply and	LS	100%		

Payment Schedule (Reference to Sub-Clause 14.4 of the Particular Conditions of Contract)				
Major Work Category	Type of Payment	Payment (in % of Total Price)	Amount	Cumulative %
Transportation)				
Civil Works, Installation and Testing (Schedule 2)				
Water Retaining Structures after completion of Construction (e.g. cascade aeration, Parshall flume, coagulation/flocculation tanks, sedimentation basins, filters, clear water reservoirs, sludge balancing and wash water tanks etc.)	P	85%		
Water Retaining Structures after Hydraulic/Pneumatic Testing	P	5%		
Water Retaining Structures after completing Finishing, protective coating measures etc.	P	5%		
Water Retaining Structures after successful completion of testing, trial run, and Process proving test	LS	5%		
Non-Water Retaining Structures , after completion of construction (like Pump House Electrical Panel Room Blower Room, Laboratory roads, drains pathways, stairs etc.).	P	90%		
Non-water retaining structures after completing finishing, protective coatings etc.	P	5%		
Non-Water Retaining Structures, after successful completion of testing, trial run, and performance guarantee test	LS	5%		
Installation, Commissioning of Mechanical, Electrical, Instrumentation control and Automation Works (Schedule 3A and 3B), Testing, Trial run, any Performance Guarantee test and Process Providing test				
Supply and Delivery at Site with	P	50%		

Payment Schedule (Reference to Sub-Clause 14.4 of the Particular Conditions of Contract)				
Major Work Category	Type of Payment	Payment (in % of Total Price)	Amount	Cumulative %
proper storage (Supply of equipment shall be in-line with approved construction programme)				
Successful Installation	P	20%		
Completion of testing, trial run, and performance guarantee test and commissioning	LS	20%		
Certification by the Employer on Successful completion and commissioning, process proving	LS	10%		
Operation Services during Twenty (20) Years Period (Schedule 6)				
Monthly O&M Services (On completion of each month's operations and maintenance.) inclusive of manpower, consumables, & preventive maintenance / replacement.	P	100%		

Sub-Clause 14.6 Payment for Plant and Materials Intended for the Works

Replace with the following the 4th Paragraph of Sub-Clause 14.6:

Interim Payment Certificates shall include amount for Plant and Materials which have been brought to the Site for incorporation in the Permanent Works. The Employer's Representative shall determine eligibility for payment in accordance with the following provisions:

- a) the Plant and Materials are in accordance with the Contract;
- b) the Plant and Materials have been delivered to the Site and are properly stored on Site and protected against loss, damage or deterioration;
- c) the Contractor's records of the requirements, orders, receipts and use of Plant and Materials are kept in a form approved by the Engineer, and such records are available for inspection by the Engineer;
- d) the Contractor has submitted invoice and challans towards delivering the Plant and Materials to the Site, together with such documents as may be required for the purpose of including the payment in the IPC by the Engineer; and
- e) the Plant and Materials are those listed in the Contract Document;
- f) Recognition of invoice against the material and supplies at the time of their

receipt at the project site should not be understood in any case, that the Contractor can procure any quantity of material which is way beyond the quantity to be consumed (estimated using the common business prudence) and the shelf life of the material expires before it being used. Accordingly, material and supplies should be procured based on the progressive use of material and supplies/equipment and the same shall correspond with the approved/ released design & drawing, and contract documents.

- g) Further, Employer shall not be responsible in any manner to recognize the billing for any excess consumption of material and supplies/ equipment's by the Contractor beyond the quantities worked out, subject to permissible variation allowed.

Sub-Clause 14.13 Application for Final Payment Certificate- Operation Service

Insert the following as 2nd paragraph to the Sub-Clause 14.13:

If the Employer's Representative disagrees with or cannot verify any part of the Final Statement Operation Service, the Employer's Representative and the Contractor shall attempt to agree such matters, and the Contractor shall re-submit his Final Statement based on the agreement with the Employer's Representative. The Employer's Representative shall then issue a Final Payment Certificate Operation Service under Sub-Clause 14.15 [Issue of Final Payment Certificate Operation Service] for the agreed amount. If the Parties cannot agree on such matters, or if the Contractor has failed to submit his application for payment within the said 28 days, the Employer's Representative shall issue an Interim Payment Certificate under Sub-Clause 14.7 [Issue of Advance and Interim Payment Certificates] for the amount which he considers to be due to the Contractor. If the Contractor is dissatisfied with the amount certified, he may refer the matter to the DAB for a decision in accordance with Clause 20.6 [Obtaining Dispute Adjudication Board's Decision].

Add the Sub-Clause 14.20 JICA Disbursement Procedure

Add the following as a new Sub-Clause 14.20

JICA's disbursement procedure is applied to this Contract for the Local currency portion of the Contract; For the Foreign currency portion, JICA's commitment procedure to be followed and the Employer shall bear the bank charges (LC charges).

CLAUSE 17 RISK ALLOCATION

Sub-Clause 17.2 Contractor's Risks during the Design-Build Period

Rename the Sub-Clause 17.2 as Contractor's Care of the Works

Add the following to the end of Sub-Clause 17.2:

Unless the Contract is terminated in accordance with these conditions, the Contractor shall take full responsibility for the care of the Works and Goods from the Commencement Date until the Commissioning Certificate for the whole of the Works is issued pursuant to Sub-Clause 11.7 [*Commissioning Certificate*]. If the Contract is terminated in accordance with these conditions, the Contractor shall cease to be responsible for the care of the Works from the date of expiry of the Notice of termination.

The Contractor shall also be responsible for the care of the Permanent Works during the Operation Service Period in accordance with the requirements of the Operating License pursuant to Sub-Clause 1.7 [*Operating License*].

The Contractor shall also be responsible for the care of any part of the Permanent Works for which a Section Commissioning Certificate has been issued.

The Contractor shall also take full responsibility for any outstanding work which he shall have undertaken to complete during the Operation Service Period until all such outstanding work is completed.

The Contractor shall also be responsible for the care of the Facilities during the Operation Service Period in accordance with the requirement of the License Agreement. Notwithstanding anything to the contrary stated in the Contract, the Contractor shall also be responsible for any part of the Works for which Section Commissioning Certificate is issued.

The Contractor shall also take full responsibility for any outstanding work which he shall have undertaken to complete during the Operation Service Period until all such outstanding work is completed.

Sub-Clause 17.13 Occupation and Care of Employer's Facilities

Add the following as a new Sub-Clause 17.13:

The Contractor occupying the Employer's facilities temporarily for the purpose of the Contract shall take full responsibility, from the dates of use or occupation to the dates of handover or cessation of occupation, of the items which are described, if any, in Volume II Technical Specifications/ Works requirements. If any loss or damage happens to any of the occupied facilities while the Contractor is responsible for their care, arising from any cause whatsoever other than the Employer's Risks listed in Sub-Clause 17.3, the Contractor shall, at its own cost, rectify such loss or damage to the satisfaction of the Employer's Representative. All temporarily occupied facilities shall be handed over upon completion of the Works, or on such other date as is mutually agreed, in the same or better condition than when they were given into the Contractor's care, normal wear and tear is accepted.

The Contractor shall be liable for any loss or damage caused by any actions performed by the Contractor after the Commissioning Certificate has been issued. The Contractor shall also be liable for any loss or damage which occurs after a Commissioning certificate has been issued and which arose from a previous event for which the Contractor was liable.

CLAUSE 18 EXCEPTIONAL RISKS OR FORCE MAJEURE

Replace the Clause 18 with the following Sub-Clauses

18.1 Definition of Force Majeure

In this Clause, "Force Majeure" means an exceptional event or circumstance:

- (a) which is beyond a Party's control,
- (b) which such Party could not reasonably have provided against before entering into the Contract,
- (c) which, having arisen, such Party could not reasonably have avoided or overcome, and
- (d) which is not substantially attributable to the other Party.

Force Majeure may include, but is not limited to, exceptional events or circumstances of the kind listed below, so long as conditions (a) to (d) above are satisfied:

- (i) war, hostilities (whether war be declared or not), invasion, act of foreign enemies,
- (ii) rebellion, terrorism, revolution, insurrection, military or usurped power, or civil war,
- (iii) riot, commotion, disorder, strike or lockout by persons other than the Contractor's Personnel and other employees of the Contractor and Subcontractors,
- (iv) munitions of war, explosive materials, ionising radiation or contamination by radio-activity, except as may be attributable to the Contractor's use of such munitions, explosives, radiation or radio-activity,
- (v) natural catastrophes such as earthquake, hurricane, typhoon or volcanic activity, and

The presence of any of the above events before the issue of Letter of Acceptance to the Contractor shall not be considered as Force Majeure.

NB: Epidemic or Pandemic related to only COVID-19 are excluded from this agreement and already considered in the Contractor's offer.

18.2 Notice of Force Majeure

If a Party is or will be prevented from performing any of its obligations under the Contract by Force Majeure, then it shall give notice to the other Party of the event or circumstances constituting the Force Majeure and shall specify the obligations, the performance of which is or will be prevented. The notice shall be given within 14 days after the Party became aware, or should have become aware, of the relevant event or circumstance constituting Force Majeure.

The Party shall, having given notice, be excused performance of such obligations for so long as such Force Majeure prevents it from performing them.

Notwithstanding any other provision of this Clause, Force Majeure shall not apply to obligations of either Party to make payments to the other Party under the Contract.

18.3 Duty to Minimise Delay

Each Party shall at all times use all reasonable endeavours to minimise any delay in the performance of the Contract as a result of Force Majeure.

A Party shall give notice to the other Party when it ceases to be affected by the Force Majeure.

18.4 Consequences of Force Majeure

If the Contractor is prevented from performing any of his obligations under the Contract by Force Majeure of which notice has been given under Sub-Clause 18.2 [*Notice of Force Majeure*], and suffers delay and/or incurs Cost by reason of such Force Majeure, the Contractor shall be entitled subject to Sub-Clause 20.1 [*Contractor's Claims*] to:

- (a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [*Extension of Time for Completion*], and
- (b) if the event or circumstance is of the kind described in sub-paragraphs (i) to (iv) of Sub-Clause 18.1 [*Definition of Force Majeure*] and, in the case of subparagraphs (ii) to (iv), occurs in the Country, payment of any such Cost.

After receiving this notice, the Employer's Representative shall proceed in accordance with Sub-Clause 3.5 [*Determinations*] to agree or determine these

matters.

18.5 Force Majeure Affecting Sub-contractor

If any Subcontractor is entitled under any contract or agreement relating to the Works to relief from force majeure on terms additional to or broader than those specified in this Clause, such additional or broader force majeure events or circumstances shall not excuse the Contractor's non-performance or entitle him to relief under this Clause.

18.6 Optional Termination, Payment and Release

If the execution of substantially all the Works in progress is prevented for a continuous period of 84 days by reason of Force Majeure of which notice has been given under Sub-Clause 18.2 [*Notice of Force Majeure*], or for multiple periods which total more than 140 days due to the same notified Force Majeure, then either Party may give to the other Party a notice of termination of the Contract. In this event, the termination shall take effect 7 days after the notice is given, and the Contractor shall proceed in accordance with Sub-Clause 16.3 [*Cessation of Work and Removal of Contractor's Equipment*].

Upon such termination, the Employer's Representative shall determine the value of the work done and issue a Payment Certificate which shall include:

- (a) the amounts payable for any work carried out for which a price is stated in the Contract;
- (b) the Cost of Plant and Materials ordered for the Works which have been delivered to the Contractor, or of which the Contractor is liable to accept delivery: this Plant and Materials shall become the property of (and be at the risk of) the Employer when paid for by the Employer, and the Contractor shall place the same at the Employer's disposal;
- (c) any other Cost or liability which in the circumstances was reasonably incurred by the Contractor in the expectation of completing the Works;
- (d) the Cost of removal of Temporary Works and Contractor's Equipment from the Site and the return of these items to the Contractor's works in his country (or to any other destination at no greater cost); and
- (e) the Cost of repatriation of the Contractor's staff and labour employed wholly in connection with the Works at the date of termination.
- (f) any other cost or liability which in the circumstances was reasonably incurred by the Contractor in the expectation of operating and maintaining the Works as set out in O&M Contract.

18.7 Release from Performance under the Law

Notwithstanding any other provision of this Clause, if any event or circumstance outside the control of the Parties (including, but not limited to, Force Majeure) arises which makes it impossible or unlawful for either or both Parties to fulfil its or their contractual obligations or which, under the law governing the Contract, entitles the Parties to be released from further performance of the Contract, then upon notice by either Party to the other Party of such event or circumstance:

- (a) the Parties shall be discharged from further performance, without prejudice to the rights of either Party in respect of any previous breach of the Contract, and
- (b) the sum payable by the Employer to the Contractor shall be the same as would have been payable under Sub-Clause 18.6 [Optional Termination, Payment and Release] if the Contract had been terminated under Sub-Clause 18.6.

ADD THE FOLLOWING ADDITIONAL CLAUSES AND THEIR RESPECTIVE SUB-CLAUSES

CLAUSE 21 OPERATION AND MAINTENANCE

21.1 General Requirements

The Contractor shall comply with the Operation and Maintenance Management Requirements as provided for in the Contract and any revisions thereof which are agreed during the Contract Period.

The Contractor shall follow the requirements of the Operation and Maintenance Plan and the Operation and Maintenance manuals. No significant alteration to such arrangements and methods shall be made without the prior approval of the Employer's Representative.

During the Operation Service, the Contractor shall be responsible for ensuring that the Works remain fit for the purposes for which they are intended.

The operators and maintenance personnel for the Works, including Plant operators shall have the appropriate experience and qualifications to perform the Operation Service required under the Contract. The names, with details of their qualifications and experience, of all operation and maintenance personnel shall be submitted to the Employer for approval, and no such personnel shall be engaged prior to receiving such approval.”

21.2 Commencement of Operation and Maintenance

Unless otherwise stated in the Employer's Requirements, the commencement of the Service shall be from the date stated in the Commissioning Certificate as specified under Sub-Clause 11.7.

The Operation Service shall not commence until all the works (the Design-Build) and Tests including process proving test or Sections have been completed in accordance with the Contract and Commissioning Certificate has been issued in terms of the Contract.

The Operation Management System shall be finalized by the Contractor and the Employer's Representative during the Process Proving test period.

Should any Notice attached or pertaining thereto, contain requirements or restrictions over and above those in the Contract, the Contractor shall comply with such requirements and/or restrictions, and, to the extent that the Contractor suffers additional Cost as a result, and subject to the provisions of Sub-Clause 20.1 [Contractor's Claims], the Contractor shall be reimbursed by the Employer unless such requirements or restrictions were as a result of a fault or failure of the Contractor.

The Contractor shall thereafter provide the Operation Service in compliance with the Operation and Maintenance Management System and in accordance with As-Built Documents and Operation and Maintenance Manuals. (Sub-Clause 5.5 and Sub-Clause 5.6).

If the Contractor wishes to modify a document which has previously been submitted and approved, the Contractor shall immediately notify the Employer's Representative, and shall subsequently submit revised document(s) to the Employer's Representative for review accompanied by a written explanation of the need for such modification.

The Contractor shall not implement any proposed modification in accordance with subparagraph (d) of Sub-Clause 5.2 [Contractor's Documents] until such modification has been reviewed by the Employer's Representative, and consent to proceed has been given in writing. However, any such approval or consent, or any review (under this Sub-Clause or otherwise), shall not relieve the Contractor from any obligation or responsibility.

21.3 Delivery of Raw Materials

The Contractor shall be responsible for the supply and delivery to the Site (or other designated place) of the chemicals, fuels, consumables and other such items specified in the Employer's Requirements. The Contractor shall be responsible that all such items are fit for purpose and comply with the requirements of the Contract in respect of quality, purpose and function. The Employer shall facilitate any strategic help to the Contractor in getting

necessary permissions and approvals for supplying the material at designated site.

In the event that any such item or product is not delivered in accordance with the agreed delivery program or deviates from the specified quality, and such delay or deviation causes the Contractor to suffer additional cost, the Contractor shall not be entitled for any extra costs which he has incurred.

21.4 Delays and Interruptions during Operation and Maintenance

Delays and interruptions during the Operation Service will be agreed and determined as follows:

a) Delays or Interruptions caused by the Contractor

If there are any delays or interruptions during the Operation Service Period which are caused by the Contractor or by a cause for which the Contractor is responsible, the Contractor shall compensate the Employer for any losses including loss of revenue, loss of profit, and overhead losses.

The amount of compensation due shall be determined and agreed according to Sub-Clause 3.5 [Determinations], and the Employer shall be entitled to recover the amount due by making a corresponding deduction from the next payment due to the Contractor.

There will be no extension of the Operation Service Period as a result of any such delay or interruption.

b) Delays or Interruptions caused by the Employer

If there are any delays or interruptions during the Operation Service which are caused by the Employer or by a cause for which the Employer is responsible, the Contractor shall raise a claim in accordance with the principles set out under Clause 20.1. There will be no extension of the Operation Service Period as a result of any such delay or interruption.

c) Suspension by the Employer

The Employer's Representative may at any time during the Operation Service Period instruct the Contractor to suspend progress of the operation and maintenance, fully or partially. During such suspension, the Contractor shall protect, store, secure and maintain the Facilities including RO membrane against any deterioration, loss or damage.

If the need to suspend the operation and maintenance by the Employer is due to any failure of the Contractor or circumstances for which the Contractor is responsible under the Contract, the provisions of paragraph

(a) of this Sub-Clause shall apply.

If the need to suspend the operation and maintenance is not as a result of any failure by the Contractor or is due to circumstances for which the Contractor is not responsible under the Contract, the provisions of paragraph (b) of this Sub-Clause shall apply.

If a suspension which is not due to any failure by the Contractor or is due to circumstances for which the Contractor is not responsible under the Contract has continued for more than 84 days, the Contractor may request the Employer's Representative permission to proceed. If the Employer's Representative does not give permission within 28 days after being requested to do so, the Contractor may give notice of termination under Sub-Clause 16.2 [Termination by Contractor].

After the permission or instruction to proceed is given, the Contractor and the Employer's Representative shall jointly examine the Facilities.

The Contractor shall make good any deterioration or defect in the Plant and the Employer's Representative shall make a written record of all making good required to be carried out by the Contractor.

If the suspension is not due to any failure by the Contractor or is due to circumstances for which the Contractor is not responsible under the Contract, the Contractor shall be entitled to be paid the Cost-plus reasonable profit (to be mutually decided) of making good the Facilities prior to re-commencing the operation and maintenance.

21.5 Failure to Maintain Compliance with Specified Water Quality

In the event that the Contractor fails to achieve and maintain compliance with the finished water quality requirements specified in the Contract, the Contractor and Employer shall jointly establish the cause of such failure.

- a) If the cause of the failure lies with the Employer or any of its agent or representatives, then, after consultation with the Contractor, the Employer shall give written instruction to the Contractor of the measures which the Employer requires the Contractor to take.

If the Contractor suffers any additional Cost as a result of the failure or the remedial measures specified by the Employer, the Employer shall pay the Contractor his Cost-plus reasonable profit (to be mutually decided), subject to Sub-Clause 3.5 [Determinations]

- b) If the cause of the failure lies with the Contractor then, after due consultation with the Employer, the Contractor shall take all steps necessary to achieve

and maintain compliance with the effluent quality requirements specified in the Contract.

If the Employer suffers any loss as a result of the failure or the measures taken by the Contractor, the Contractor, subject to Sub-Clause 3.5 [Determinations], shall pay the Employer performance damages as stipulated in Clause no 22, Functional Guarantees.

Unless otherwise stated in the Clause 22, Functional Guarantees, if the failure continues for a period of more than 28 days, and the Contractor is unable to achieve compliance with the effluent quality requirements specified in the Contract, the Employer may:

- i. either continue with the operation and maintenance with the deduction in the Contractor's monthly payment as stated in Cause 23, Functional Guarantees or
- ii. give the Contractor 56 days' notice in writing and terminate the Contract. In such an event, the Employer shall be free to continue the operation and maintenance himself or by others. The Contractor shall pay to the Employer for any loss suffered due to this performance damage.

21.6 Completion of Operation and Maintenance

Unless the Parties have mutually agreed to extend the Operation Service Period, the obligation of the Contractor to operate and maintain the Facilities under the Contract shall cease at the end of the period stated in the Contract Data as the Operation Service Period.

Notwithstanding the foregoing, other services required to be performed by the Contractor must be completed before the Contractor will be entitled to receive the Contract Completion Certificate on Completion of the Operation Service Period in accordance with the provisions of this Contract.

Pre-conditions which must be fulfilled by the Contractor before the Contract Completion Certificate on Completion of the Operation Service Period will be issued are:

- a) Inspection in accordance with Sub-Clause 11.8 [Joint Inspection Prior to Contract Completion],
- b) Testing in accordance with Sub-Clause 11.9 [Procedure for Tests Prior to Contract Completion],
- c) Updating Operation and Maintenance Manuals and providing performance records and data in accordance with Sub-Clause 5.6 [Operation and Maintenance Manuals], and

- d) Remedying defects found during inspection in accordance with Sub-Clause 9.5 [Joint Inspection Prior to Contract Completion].

All work shall be executed by the Contractor at his own cost before handing over the Works. In the event that the Contractor fails to carry out the necessary remedial works, the Employer shall notify the Contractor, and proceed in accordance with the provisions of the contract. Any costs incurred by the Employer in so doing shall be recoverable from the Contractor and will become a debt due and payable by the Contractor to the Employer and the Employer may, at his sole discretion, recover such amount by invoking the Contractor's bank guarantee provided as Performance Security.

21.7 Operating License

The Employer shall issue to the Contractor the Operating License or equivalent legal authorization to enable the Contractor to operate and maintain the Facilities during the Operation Service Period.

The Operating License shall automatically come into full force and effect upon issue of the Commissioning Certificate upon completion of the execution of the Works in accordance with the Contract.

The Operating License shall only extend to those parts of the Site which it is required to occupy for the purposes of carrying out the Works as set out in the Contract. The Operating License granted pursuant to this clause shall not operate nor be deemed to operate as a tenement or a demise of the Site or any part thereof.

The Contractor shall not have or be entitled to any estate, right, title or interest in the Site / Facilities. The license will immediately terminate upon termination of this Contract for whatever reason.

21.8 Adverse Operating Conditions

In the event the raw water quality deteriorates beyond the specifications provided, the following provision will be applicable:

If the raw water can still be treated to meet the Output Standards, the Contractor shall comply with such specifications.

- a) In the event it is not possible to meet the Output Standards, the Contractor shall, as soon as practically possible, inform the Employer. The Parties shall consult in good faith to arrive at mutually acceptable Alternative Output Standards (hereinafter "Alternative Output Standards"), which shall be complied with by the Contractor till the time the raw water quality is restored.

- b) In the event the change in characteristics is for a period of more than 30 days and it is possible to meet the Alternative Output Standards, the Contractor shall meet the Alternative Output Standards, till the time the raw water quality is restored.
- c) The Liquidated Damages as specified in Clause No 22 [Functional Guarantees], then shall be applicable on the agreed Alternative Output Standards.

In such a case, the Contractor shall be suitably compensated with reasonable profit for any additional cost incurred.”

21.9 Independent Compliance Audit:

At least 182 days prior to the-commencement of the Operation Service Period, the Employer and the Contractor shall jointly appoint the Auditing Body to carry out an independent and impartial audit during the Operation Service Period. The terms of appointment of the Auditing Body shall be included in the Employer's Requirements, and the purpose will be to audit and monitor the performance of both the Employer and the Contractor during the Operation Service Period in compliance with the Operation Management Requirements. If the Parties cannot agree on the appointment of the Auditing Body, the matter shall be referred to the DB by the Parties. The Dispute Adjudication Board shall make the appointment and notify the Parties accordingly.

The Auditing Body shall commence its duties on the same date as the Operation Service Period commences.

Payment of the Auditing Body shall be made from the Provisional Sum included in the Contract for that purpose.

Both Parties shall cooperate with the Auditing Body and give due regard to the matters raised in each report issued by the Auditing Body.

CLAUSE 22 FUNCTIONAL GUARANTEES

General

This Clause sets out:

- a) the functional guarantees as described in Schedule of Guarantees (SOG);
- b) the preconditions to the validity of the functional guarantees, either in production and/or consumption, set forth below;
- c) the minimum level of the functional guarantees; and

- d) the formula for calculation of liquidated damages for failure to attain the functional guarantees.

The Contractor's guarantee for the performance in the Operation Service period to be as follows:

- A) Product water (Treated finished water) Quality Guarantee (as per SOG)
- B) Chemical Usage: (As per SOG)
- C) Power: (As per SOG)
- D) Plant availability (As per SOG)

Not being able to demonstrate the plant performance during Test on Completion including process proving shall render the plant as "Non-Acceptable" leading to a liquidity damage and shall forfeit the performance securities.

Contractor is to maintain guarantee parameters for treated finished water quality consistently during Defect Liability Period and O&M period.

The treated finished (product) water parameters shall be demonstrated with 24 hour composite samples with 98 to 100% compliance on monthly basis i.e. not more than 2% cumulative samples during the month can be off specifications.

During commissioning and tests, Contractor will rectify the plant to ensure successful commissioning along with process proving.

During 20 Years of operation & maintenance including one year of DLP, the Employer will impose the following penalties/liquidated damages for not maintaining the guaranteed parameters, as described below:

Condition A:

Liquidated Damages for Non-Compliance of Treated finished (product) water Quality will be equivalent to Daily payment for each day of Non-Compliance.

Liquidated Damages for non-compliance of treated finished water standards.

Event Triggering the recovery of Liquidity Damages	Liquidated Damages	Frequency
Non-conformance with Finished water quality	Rs.10000/-	For every event of non-conformance

The cumulative of above liquidated damages shall not exceed the monthly O&M cost (Maximum Liquidated Damages).

Condition-B: Liquidated Damages for not meeting the Power consumption Guarantee

Contractor shall give complete details of total Electric power consumption,

During Operation Service Period, damages payable by Contractor to Employer for exceeding the guaranteed Electric power consumption shall be equal to the actual cost of the excess Electric energy consumed plus the penalty of INR 50,000 per event as provided in Technical Schedule Functional Guarantees of the plant. Such payable amount will be assessed for each month during O&M period.

During the Operation Service Period, the guarantees would come into effect for Electric power consumption.

Condition-C: Breakdown of Equipment:

In case of breakdown of equipment for more than the stipulated time period as below, on discretion of Employer's Representative, the Contractor shall be penalized as mentioned below:

Equipment	Breakdown Time Period	Penalty Imposed
<p>Critical Equipment/ Instrumentation</p> <p>(Critical equipment shall mean those equipment's / systems which are essential to ensure the plants performance and it shall include all flow rate and product water quality measuring instruments and systems including mixers, blowers, pumps, disinfection (chlorination system), media filtration systems, RO membrane systems, electrical systems such as critical electrical system such transformers, electrical panels etc.</p>	beyond 14 calendar days	Daily O&M Cost of default beyond permitted breakdown time period
<p>Semi-Critical Equipment</p> <p>Semi Critical equipment shall mean those equipment's / systems which are normally required to achieve the plants performance and they shall include all screens, coagulation/flocculation systems, Lamella system, DAF, sludge collection, dewatering and disposal and all process items not covered in Critical equipment etc.</p>	beyond 21 calendar days	50% of Daily O&M Cost of default beyond permitted breakdown time period
<p>Non-Critical Equipment</p> <p>Non-Critical equipment shall mean those equipment's/ systems which have been provided at the plant but are not critical in for delivering the plants performance, such as building, area lighting, air conditioners, Instruments and all other items which are not covered in Critical and Semi-critical equipment and which are not critical towards the operation of the plant and its performance maintenance.</p>	beyond 28 calendar days	25% of Daily O&M Cost of default beyond permitted breakdown time period

The cumulative of above liquidated damages shall not exceed the monthly O&M cost (Maximum Liquidated Damages).

NOTE: In case the liquidated damages due to non-conformance for

Condition A for Treated finished water Quality becomes equal to or more than 50% of the monthly O&M value for a period more than 5 months in a year, then the Employer reserves the right to terminate the Contract after encashing all the Security Deposits, retention Money and Performance Guarantees.

Condition-D: Residual Handling & Disposal

The Plant Residuals shall conform to the following specifications:

Excess sludge wastewater & solids

The Sludge produced shall contain minimum 25% w/w of Solid Content Concentration for “spade able” or “open body truck able” consistency for easy transportation and disposal.

Dewatered Solids shall be handled and transported by the Contractor in a nuisance free manner following environmental guidelines. If the performance of the Contractor is not found satisfactory in respect of processing, handling and transportation of the sludge, the Employer shall have the liberty to recover from Contractor two (2) times the cost incurred for handling and transportation of the residuals.

Condition-E: Absent Staff

A penalty will be levied in the event that any of the Management, operation and maintenance Personnel listed in the specification are absent from specified shifts during the Operation Service Period as follows:

Sl. No.	Designation	Penalty per person per shift in INR
1	Plant Manager	2,500
2	Plant Supervisor/ Superintendent	2,000
3	Shift-in-charge	1,000
4	Operators for WTP	1,000
5	Plant Chemist	1,500

Sl. No.	Designation	Penalty per person per shift in INR
6	Electrician	1,000
7	Instrumentation and Control Technician	1,000
8	Fitter/Mechanic	1,000
9	Peon	400
10	Gardener	400
11	Helpers for Sludge Handling	500

The penalty shall be increased during each year of operation in accordance with the relevant indices for salaries as provided by the RBI.

CLAUSE NO 23 SPARE PARTS

In addition to the supply of mandatory spare parts included in the contract, the Contractor shall supply spare parts required for the operation and maintenance of the facilities for the 20 + 2 years period of Operation Service including one year of DLP. So that at handover of the plant after Operation Service Period of 20 years, at least 2 years of spare parts are available at the plant. However, the identity, specifications and quantities of such spare parts and the terms and conditions relating to the supply thereof shall be as per employer's requirement as described elsewhere and with his consent and the price of such spare parts shall be that given in price bid, which shall be added to the contract price. The price of such spare parts shall include the purchase price thereof and other costs and expenses (including contractor's fees) relating to the supply of spare parts.

CLAUSE NO 24 TRAINING

The Contractor shall carry out the training of Employer's Personnel in the operation and maintenance of the Works to the extent specified in the Employer's Requirements. The programme and scheduling of the training shall be agreed with the Employer, and the Contractor shall provide experienced training staff, and all training materials as stated in the Employer's

Requirements. The Employer shall be responsible for providing the training facilities and nominating and selecting suitable personnel for training.

CLAUSE 25 STATUTORY COMPLIANCE

The law of the place of the work shall govern the work of the Contract. The Contractors shall be responsible for all work & shall comply to the requirements of all applicable Central (Federal), State & Local Laws, ordinances, guidelines, rules

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Section IX. Annex to the Particular Conditions - Contract Forms

Table of Forms

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Letter of Acceptance

[Insert letterhead paper of the Employer]

[Insert date]

To: *[Insert name and address of the Contractor]*

This is to notify you that your Bid dated *[insert date]* for execution of the *[insert name of the Contract and identification number, as given in the Contract Data]* for the Accepted Contract Amount of the equivalent of *[insert amount in words and figures]* *[insert name of currency]*, as corrected and modified in accordance with the Instructions to Bidders, is hereby accepted by our Agency.

This Accepted Contract Amount is made up of the following components:

For the Design-Build of the Works, the amount of: _____ (*currency and amount in words*)

For the Operation Service, the amount of: _____ (*currency and amount in words*)

You are requested to furnish the Performance Security within 28 days in accordance with the Conditions of Contract, using for that purpose one of the Performance Security Forms included in Section IX, Annex to the Particular Conditions - Contract Forms, of the Bidding Documents

Authorized Signature:

Name and Title of Signatory:

Name of Agency:

Attachment: Contract Agreement

Contract Agreement

THIS AGREEMENT made the *[insert day]* day of *[insert month]*, *[insert year]*, between *[insert name of the Employer]* (hereinafter “the Employer”), of the one part, and *[insert name of the Contractor]* (hereinafter “the Contractor”), of the other part:

WHEREAS the Employer desires that the Works known as *[name of the Contract]* should be executed by the Contractor, and has accepted a Bid by the Contractor for the execution and completion of these Works and the remedying of any defects therein,

The Employer and the Contractor agree as follows:

1. In this Agreement words and expressions shall have the same meanings as are respectively assigned to them in the Contract documents referred to.
2. The following documents shall be deemed to form and be read and construed as part of this Agreement. This Agreement shall prevail over all other Contract documents.
 - i. the Contract Agreement (including addenda, corrigenda, reply to pre-bid queries, clarifications)
 - ii. the Letter of Acceptance
 - iii. PART III: Particular Conditions of Contract (Part B- Specific Provisions)
 - iv. PART III: Particular Conditions of Contract (Part A- Contract Data)
 - v. PART III: General Conditions of Contract
 - vi. PART II Employer’s Requirement (drawings, specifications, etc.)
 - vii. The Bidder’s accepted Price Proposal
 - viii. Bidder’s Drawings
 - ix. Completed Technical Schedules
 - x. Bidder’s Technical Proposal and any other documents forming part of the Contract including JICA’s concurrence of the Contract
 - xi. Any other documents issued by the Employer before signing the Contract Agreement and forming the part of the Contract.
 - xii. The Form Acknowledgment of Compliance with Guidelines for Procurement under Japanese ODA Loans.

If an ambiguity or discrepancy is found in the documents, the Employer’s Representative shall issue any necessary clarification or instruction.

3. In consideration of the payments to be made by the Employer to the Contractor as specified in this Agreement, the Contractor hereby covenants with the Employer to execute the Works and to remedy 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 to be executed in accordance with the laws of *[insert the laws of the borrowing country]* on the day, month and year specified above.

Signed by _____

Signed by _____

for and on behalf of the Employer
Contractor in the presence of

for and on behalf the
in the presence of

Witness, Name, Signature, Address, Date

Witness, Name, Signature, Address, Date

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Schedules

Notes on Schedules

‘Schedule’ means the document(s) entitled schedules, completed by the Contractor and submitted with the letter of tender, as included in the Contract. Such documents may include data, lists, and/or design and/or other technical criteria, for the Works.

(List the items comprising Schedules. Typical Schedules are as followings)

SCHEDULE-1: Schedule of Prices

Note: *Insert Schedule of Prices submitted with the Letter of (Price) Bid and finalized at signing of the Contract*

SCHEDULE-2: Schedule of Payment

Note: *Insert Schedule of included in Bidding Documents and finalized at signing of the Contract (if any).*

SCHEDULE-3: Schedule of Adjustment

Note: *Insert Schedule of Adjustment submitted with the Letter of (Price) Bid.*

SCHEDULE-4: Schedule of Guarantee

Note: *Insert Schedule of Guarantee submitted with the Letter of (Technical) Bid.*

Contractor's Proposal

Notes on Contractor's Proposal

'Contractor's Proposal' means the documents entitled proposal, which the Contractor submitted with the letter of tender, as included in the Contract.

(List the items of Contractor's Proposal comprising Technical Proposal)

Performance Security

Option 1: (Demand Guarantee)

[Insert Guarantor letterhead or SWIFT identifier code]

Beneficiary: *[Insert name and Address of the Employer]*

Date: *[Insert date of issue]*

PERFORMANCE GUARANTEE No.: *[Insert guarantee reference number]*

Guarantor: *[Insert name and address of place of issue, unless indicated in the letterhead]*

We have been informed that *[insert name of Contractor, which in the case of a joint venture shall be the name of the joint venture]* (hereinafter called "the Applicant") has entered into Contract No. *[insert reference number of the contract]* dated *[insert date]* with the Beneficiary, for the execution of *[insert name of the contract and brief description of the Works]* (hereinafter called "the Contract").

Furthermore, we understand that, according to the conditions of the Contract, a performance guarantee is required.

At the request of the Applicant, we as Guarantor, hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of *[insert amount in figures]* (*[insert amount in words]*)¹, such sum being payable in the types and proportions of currencies in which the Contract Price is payable, upon receipt by us of the Beneficiary's complying demand supported by the Beneficiary's statement, whether in the demand itself or in a separate signed document accompanying or identifying the demand, stating that the Applicant is in breach of its obligation(s) under the Contract, without the Beneficiary needing to prove or to show grounds for its demand or the sum specified therein.

This guarantee shall expire, no later than the *[insert the day]* day of *[insert month]*, *[insert year]*², and any demand for payment under it must be received by us at this office indicated above on or before that date.

This guarantee is subject to the Uniform Rules for Demand Guarantees (URDG) 2010 Revision, ICC Publication No. 758, except that the supporting statement under Article 15(a) is hereby excluded.

¹ The Guarantor shall insert an amount representing the percentage of the Accepted Contract Amount specified in the Letter of Acceptance, less provisional sums, if any, and denominated either in the currency(ies) of the Contract or a freely convertible currency acceptable to the Beneficiary.

² Insert the date twenty-eight days after the expected completion date as described in GC Clause 11.9. The Employer should note that in the event of an extension of this date for completion of the Contract, the Employer would need to request an extension of this guarantee from the Guarantor. Such request must be in writing and must be made prior to the expiration date established in the guarantee. In preparing this guarantee, the Employer might consider adding the following text to the form, at the end of the penultimate paragraph: "The Guarantor agrees to a one-time extension of this guarantee for a period not to exceed *[six months]**[one year]*, in response to the Beneficiary's written request for such extension, such request to be presented to the Guarantor before the expiry of the guarantee."

[signature (s)]

[Note: All italicized text (including footnotes) is for use in preparing this form and shall be deleted from the final product.]

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Option 2: Performance Bond

By this Bond *[insert name of Principal]* as Principal (hereinafter called “the Contractor”) and *[insert name of surety]* as Surety (hereinafter called “the Surety”), are held and firmly bound unto *[insert name of the Employer]* as Obligee (hereinafter called “the Employer”) in the amount of *[insert the amount in words and figures]*, for the payment of which sum well and truly to be made in the types and proportions of currencies in which the Contract Price is payable, the Contractor and the Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS the Contractor has entered into a written Agreement with the Employer dated the *[insert date]* day of *[insert month]*, *[insert year]*, for *[insert name of contract and brief description of Works]* in accordance with the documents, plans, specifications, and amendments thereto, which to the extent herein provided for, are by reference made part hereof and are hereinafter referred to as the Contract.

NOW, THEREFORE, the Condition of this Obligation is such that, if the Contractor shall promptly and faithfully perform the said Contract (including any amendments thereto), then this obligation shall be null and void; otherwise, it shall remain in full force and effect. Whenever the Contractor shall be, and declared by the Employer to be, in default under the Contract, the Employer having performed the Employer’s obligations thereunder, the Surety may promptly remedy the default, or shall promptly:

- (1) complete the Contract in accordance with its terms and conditions; or
- (2) obtain a Bid or Bids from qualified Bidders for submission to the Employer for completing the Contract in accordance with its terms and conditions, and upon determination by the Employer and the Surety of the lowest responsive Bidder, arrange for a Contract between such Bidder and Employer and make available as work progresses (even though there should be a default or a succession of defaults under the Contract or Contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the Balance of the Contract Price; but not exceeding, including other costs and damages for which the Surety may be liable hereunder, the amount set forth in the first paragraph hereof. The term “Balance of the Contract Price,” as used in this paragraph, shall mean the total amount payable by Employer to Contractor under the Contract, less the amount properly paid by Employer to Contractor; or
- (3) pay the Employer the amount required by Employer to complete the Contract in accordance with its terms and conditions up to a total not exceeding the amount of this Bond.

The Surety shall not be liable for a greater sum than the specified penalty of this Bond.

Any suit under this Bond must be instituted before the expiration of one year from the date of the issuing of the Taking-Over Certificate.

No right of action shall accrue on this Bond to or for the use of any person or corporation other than the Employer named herein or the heirs, executors, administrators, successors, and assigns of the Employer.

In testimony whereof, the Contractor has hereunto set his hand and affixed his seal, and the Surety has caused these presents to be sealed with his corporate seal duly attested by the signature of his legal representative, this *[insert day]* day of *[insert month]*, *[insert year]*.

SIGNED ON _____ on behalf of

By _____ in the capacity of

In the presence of_

SIGNED ON _____ on behalf of

By _____ in the capacity of

In the presence of_

[Note: All italicized text (including footnotes) is for use in preparing this form and shall be deleted from the final product.]

Advance Payment Security

Demand Guarantee

[Insert Guarantor letterhead or SWIFT identifier code]

Beneficiary: *[Insert name and address of the Employer]*

Date: *[Insert date of issue]*

ADVANCE PAYMENT GUARANTEE No.: *[Insert guarantee reference number]*

Guarantor: *[Insert name and address of place of issue, unless indicated in the letterhead]*

We have been informed that *[insert name of Contractor, which in the case of a joint venture shall be the name of the joint venture]* (hereinafter called "the Applicant") has entered into Contract No. *[insert reference number of the contract]* dated *[insert date of the contract]* with the Beneficiary, for the execution of *[insert name of contract and brief description of Works]* (hereinafter called "the Contract").

Furthermore, we understand that, according to the conditions of the Contract, an advance payment in the sum *[insert amount in figures]* (*[insert amount in words]*) is to be made against an advance payment guarantee.

At the request of the Applicant, we as Guarantor, hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of *[insert amount in figures]* (*[insert amount in words]*)³ upon receipt by us of the Beneficiary's complying demand supported by the Beneficiary's statement, whether in the demand itself or in a separate signed document accompanying or identifying the demand, stating either that the Applicant:

- (a) **has used the advance payment for purposes other than the costs of mobilization in respect of the Works; or**
- (b) **has failed to repay the advance payment in accordance with the Contract conditions, specifying the amount which the Applicant has failed to repay.**

A demand under this guarantee may be presented as from the presentation to the Guarantor of a certificate from the Beneficiary's bank stating that the advance payment referred to above has been credited to the Applicant on its account number *[insert number]* at *[insert name and address of Applicant's bank]*.

The maximum amount of this guarantee shall be progressively reduced by the amount of the advance payment repaid by the Applicant as specified in copies of interim statements or payment certificates which shall be presented to us. This guarantee shall expire, at the latest, upon our receipt of a copy of the interim payment certificate indicating that ninety (90) percent of the Accepted Contract Amount, less provisional sums, has been certified for

³ The Guarantor shall insert an amount representing the amount of the advance payment and denominated either in the currency(ies) of the advance payment as specified in the Contract, or in a freely convertible currency acceptable to the Employer.

payment, or on the *[insert day]* day of *[insert month]*, *[insert year]*⁴, whichever is earlier. Consequently, any demand for payment under this guarantee must be received by us at this office on or *before* that date.

This guarantee is subject to the Uniform Rules for Demand Guarantees (URDG) 2010 Revision, ICC Publication No. 758, except that the supporting statement under Article 15(a) is hereby excluded.

[signature (s)]

[Note: All italicized text (including footnotes) is for use in preparing this form and shall be deleted from the final product.]

⁴ Insert the expected expiration date of the Time for Completion. The Employer should note that in the event of an extension of the time for completion of the Contract, the Employer would need to request an extension of this guarantee from the Guarantor. Such request must be in writing and must be made prior to the expiration date established in the guarantee. In preparing this guarantee, the Employer might consider adding the following text to the form, at the end of the penultimate paragraph: "The Guarantor agrees to a one-time extension of this guarantee for a period not to exceed *[six months]**[one year]*, in response to the Beneficiary's written request for such extension, such request to be presented to the Guarantor before the expiry of the guarantee."

Retention Money Security

Demand Guarantee

[Insert Guarantor letterhead or SWIFT identifier code]

Beneficiary: *[Insert name and Address of Employer]*

Date: *[Insert date of issue]*

RETENTION MONEY GUARANTEE No.: *[Insert guarantee reference number]*

Guarantor: *[Insert name and address of place of issue, unless indicated in the letterhead]*

We have been informed that *[insert name of Contractor, which in the case of a joint venture shall be the name of the joint venture]* (hereinafter called "the Applicant") has entered into Contract No. *[insert reference number of the contract]* dated *[insert date]* with the Beneficiary, for the execution of *[insert name of contract and brief description of Works]* (hereinafter called "the Contract").

Furthermore, we *understand* that, according to the conditions of the Contract, the Beneficiary retains moneys up to the limit set forth in the Contract ("the Retention Money"), and that when the Taking-Over Certificate has been issued under the Contract and the first half of the Retention Money has been certified for payment, payment of *[insert the second half of the Retention Money or if the amount guaranteed under the Performance Guarantee when the Taking-Over Certificate is issued is less than half of the Retention Money, the difference between half of the Retention Money and the amount guaranteed under the Performance Security]* is to be made against a Retention Money guarantee.

At the request of the Applicant, we, as Guarantor, hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of *[insert amount in figures]* (*[insert amount in words]*)⁵ upon receipt by us of the Beneficiary's complying demand supported by the Beneficiary's statement, whether in the demand itself or in a separate signed document accompanying or identifying the demand, stating that the Applicant is in breach of its obligation(s) under the Contract, without the Beneficiary needing to prove or show grounds for its demand or the sum specified therein.

A demand under this guarantee may be presented as from the presentation to the Guarantor of a certificate from the Beneficiary's bank stating that the second half of the Retention Money as referred to above has been credited to the Applicant on its account number *[insert account's number]* at *[insert name and address of Applicant's bank]*.

This guarantee shall expire no later than the *[insert day]* day of *[insert month]*, *[insert year]*⁶,

⁵ The Guarantor shall insert an amount representing the amount of the second half of the Retention Money or if the amount guaranteed under the Performance Guarantee when the Taking-Over Certificate is issued is less than half of the Retention Money, the difference between half of the Retention Money and the amount guaranteed under the Performance Security and denominated either in the currency(ies) of the second half of the Retention Money as specified in the Contract, or in a freely convertible currency acceptable to the Beneficiary.

⁶ Insert the same expiry date as set forth in the Performance Security, representing the date twenty-eight days

and any demand for payment under it must be received by us at the office indicated above on or before that date.

This guarantee is subject to the Uniform Rules for Demand Guarantees (URDG) 2010 Revision, ICC Publication No. 758, except that the supporting statement under Article 15(a) is hereby excluded.

[signature (s)]

[Note: All italicized text (including footnotes) is for use in preparing this form and shall be deleted from the final product.]

after the completion date described in GC Clause 11.9. The Employer should note that in the event of an extension of this date for completion of the Contract, the Employer would need to request an extension of this guarantee from the Guarantor. Such request must be in writing and must be made prior to the expiration date established in the guarantee. In preparing this guarantee, the Employer might consider adding the following text to the form, at the end of the penultimate paragraph: "The Guarantor agrees to a one-time extension of this guarantee for a period not to exceed [six months][one year], in response to the Beneficiary's written request for such extension, such request to be presented to the Guarantor before the expiry of the guarantee."