

COMMERCIAL TERMS AND CONDITIONS

1. **Bid Validity:** Bid shall be valid for a period of minimum Sixty (60) days from the date of submission of Techno-commercial offer.
2. **Scope of Work:-** Detailed Scope of Work is annexed herewith as Annexure – A
3. **Taxes & Duties:-** Except as otherwise specifically provided, the Contract Price shall be inclusive of all Taxes and duties.

Contractor shall ensure payment of GST to the authorities within time schedule and file returns as per government guidelines. Owner shall not be liable for any delay on part of Contractor in discharging its obligations for taxes and duties.

All payments to the Contractor shall be subject to applicable withholding or statutory deductions in respect of income tax and other Taxes required to be deducted. The Owner shall issue necessary tax deduction/withholding certificates to the Contractor.

For the purpose of this SO “**Tax**” or “**Taxes**” shall mean and include all taxes, including income tax, withholding tax, dividend distribution tax, capital gains tax, fringe benefit tax, GST, customs duty, wealth tax, gift tax, franchise, property, use, employment, license, occupation tax, governmental charges, fees, cesses, levies or assessments or other taxes, levies, fees, stamp duties, statutory gratuity and provident fund payments or other employment benefit plan contributions, withholding obligations and similar charges levied under the applicable law and shall include any interest, fines, and penalties related thereto and, with respect to such taxes, any estimated tax, interest and penalties or additions to tax and interest on such penalties and additions to tax together with any other statutory charges which may be payable by the Contractor, its sub-contractors (if any) and any of their employees, levied under the applicable law.

Change in Tax or Applicable Taxes or Introduction of New Taxes: In case of any change in Taxes, after the date of this SO, the Contract Price shall be accordingly increased or decreased by the amount of the increase or decrease in Taxes. The quantum of such increase or decrease in the Contract Price shall be subject to submission of documentary evidence in support of the Change in Taxes by the Contractor to the Owner.

In case there is delay in completion of work due to reasons attributable to the Contractor then any change in Taxes during the delayed period shall be to the Contractor’s account and the Owner shall not be liable for the same in any manner whatsoever. *Provided that* in case any such change in Taxes results in reduction of the Contractor’s tax liability (whether by way of reduction in the tax rates concessions, exemption, rebates or otherwise) the benefit of such reduction in Taxes shall be passed on to the Owner.

4. Terms of Payment:-

I. Payment terms for Ash Transportation Order shall be as follows:

- i. 100% of the Contract Price shall be paid with-in 30 days upon submission of following documents:
 - a) Monthly RA bill duly certified by Owner's Engineer-In charge (clearly indicating cross reference with the item Serial No., Service Code/ Description).
 - b) LR/Challan
 - c) Weighment slips duly certified by Owner's Engineer In-charge

II. Payment terms for other works shall be as follows :

- i. 95% of the Basic Contract Price along with 100% GST shall be paid with-in 30 days upon submission of fort-nightly RA Bill duly verified by Owner's Engineer In-charge ("EIC") along with following documents:
 - a) Invoice duly certified by EIC (clearly indicating cross reference with the item serial no., service code/ description). Invoice should contain the GST Number;
 - b) Details of labour employed for the Works and salaries paid to them;
 - c) Details of amount of PF deducted from the salary of the labour, Contractor's contribution and amount deposited in EPF against each labour;
 - d) Copy of the challan for the amount deposited in EPF till previous month, duly certified by the Owner's EIC;
 - e) The Contractor shall also submit month-wise labour payment record duly certified by the Owner's EIC along with the RA Bill;
 - f) Labor License under CLRA Act-1970 (if applicable);
 - g) License under ISMW Act-1979 (if any); and
 - h) Insurance policy under Employees Compensation Act, 1923 (WC Policy);
 - i) Labour Welfare Fund Act Return (Half Yearly) (if applicable);
 - j) Professional Tax Challan (monthly) and Return (quarterly) (if applicable);
 - k) ISMW Return (Half Yearly) (if applicable);
 - l) Payment of Bonus (Yearly) (if applicable).
- ii. 5% of the Basic Contract Price except the basic price of soil cover & overburden shall be paid within thirty (30) days after completion of work and upon submission of following documents:
 - a) Request letter for release of payment
 - b) Completion Certificate issued by Owner
 - c) No demand certificate in the format provided by Owner
 - d) Indemnification of statutory compliance in the format provided by Owner
- iii. 5% of the Basic price of soil cover and overburden shall be paid within thirty (30) days after completion of warranty/defect liability period of 24 months or after submission of Performance Bank Guarantee (PBG) of equivalent amount valid till completion of warranty/defect liability period with additional claim period of 2 (two) months.

5. **Contract Performance Bank Guarantee:-** Contractor shall procure and deliver to the Owner a Contract Performance Bank Guarantee (CPBG) equivalent to 10% of Basic Price, issued by the scheduled Indian Bank which shall be valid till 60 (sixty) days from the date of completion of work with claim period of 2 (Two) months from the date of expiry. CPBG shall be submitted immediately after issuance of SO. The CPBG shall have the provision of the same currency as the Contract price. CPBG shall be returned to the Contractor in original after its expiry.

6. **Warranty/Defect Liability Period:-** The Contractor shall give 24 (twenty four) months warranty from the date of completion of work in relation to all the Works done by the Contractor and shall ensure that the Works provide trouble free performance/ operation.

The Contractor shall be solely responsible for rectifying any problem faced in relation to the Works completed by it. . The Contractor shall promptly and within 21 days of the Owner raising such complaint with the Contractor rectify the issue to the satisfaction of the Owner's EIC, with no cost/ expense to the Owner.

7. Liquidity Damages:-

i. **Penalty for non-transportation of minimum guaranteed ash:**

In case, contractor fails to lift and Transport, at-least 30000 MT of ash on monthly basis due to reasons attributable to them, LD @ 1.5 times the Transportation rate multiplied by shortfall quantity shall be applied. No LD shall be applicable during the mobilization period of 15 days from the date of Service Order.

ii. **Penalty for spillage of ash while transportation:**

a) Ash spillage while transporting the ash during night hours must be collected and transported to the disposal/usage site before commencement of no entry, else suitable penalty (between Rs. 5000 to Rs. 20,000) per instance shall be levied. Quantum of penalty shall be decided based on severity of ash spillage.

b) Ash spillage while transporting the ash during daytime must be collected and transported to the disposal/usage site with-in 4 hours, else suitable penalty (between Rs. 5000 to Rs. 20,000) per instance shall be levied. Quantum of penalty shall be decided based on severity of ash spillage.

iii. **Penalty for over speeding of vehicles:**

a) Speed limit between Sai Mandir to Railway underpass Tiraha in Anuppur shall be 30 KMPH and penalty for over speeding on this stretch shall be as follows:

- Maximum Speed between 31 KMPH and 40 KMPH – Rs. 500 per Trip
- Maximum Speed above 40 KMPH– Rs.2000 per Trip

b) Speed limit for other areas shall be 40 KMPH and penalty on over speeding for other areas shall be as follows:

- Maximum Speed between 55 KMPH and 65 KMPH – Rs. 500 per Trip
- Maximum Speed above 65 KMPH– Rs.2000 per Trip

Above penalty shall be capped at Rs. 1,00,000 per month for first three months and after that same shall be applicable on actual basis. In case, any driver is fined for more than 3 times, he must be blacklisted and removed from the work on immediate basis.

Further, in case any Driver carries out any accident, he must be removed from the work on immediate basis.

- iv. **Damages for damage caused by negligence/violation of safety norms:** In event of any accidents/fire caused by the negligence/violation of safety norms by the Contractor and/or his workmen, damages shall be applicable, and the amount for the same shall be recovered from the Contractor's RA Bill. The amount shall be as per the actual loss incurred by the Owner as per the estimate provided by the Owner's EIC. . The estimate provided by the EIC shall be final and binding on the Contractor.

It is hereby clarified that it shall be the duty of the Contractor to abide by all the safety norms as prescribed in terms of the law and/or by the Owner. In the event it is found that the Contractor has been violating the safety norms or have not been taking appropriate steps to prevent accidents/mishaps, , then the Contractor shall be required to pay @ INR 5,000 (INR Five Thousand) per instance

The Contractor shall compulsorily provide personal protective equipment 's (“PPEs”) to its employees/worker and in the event the Contractor is unable to do so by the date specified by EIC or as mentioned in the SO, the same shall be provided by the Owner at the Contractor's risk and cost. The cost of such PPEs provided by the Owner shall be recovered from Contractor's RA bill at 'Double rates'.

- v. **Penalty for damage caused by negligence resulting in fatality/serious injuries:** In the event, the Contractor does not ensure all the required safety provisions as prescribed in this SO and as per the applicable laws and a person is injured due to the fact that the safety measures were not followed by the Contractor or due to lack of supervision, then in such an event the Contractor shall be required to pay damages as per the following:

- a) If any of the Contractor's employee/worker suffers injury that causes death of that person then damages @ 10% of the Contract Price or INR 5,00,000 (INR Five Lakhs Only) whichever is less, shall be levied on the Contractor for each case;
- b) If any of the Contractor's employee/worker suffers from major injury or accident causing 25% or more permanent disablement then damages @ 2.5% of Contract Price or INR1,00,00 (INR One Lakh Only) whichever is less shall be levied on the Contractor for each person who suffers such injury.

In addition to the aforesaid, compensation as per Workmen's Compensation Act shall also be paid

by the Contractor to the worker.

It is hereby clarified and agreed that it shall be the duty and responsibility of the Contractor to take care of any injured person and provide such person with the best medical treatment without any delay.

8. **Mode of Payment:-** All direct payments to Contractor shall be made in Indian Rupees within 30 days of submission of invoice along with relevant documents as per the terms of this SO. Such payments shall be made to such accounts as are designated by the party receiving payment. All direct payments made by Owner to Contractor shall be made through NEFT/ RTGS to the bank account of the Contractor.
9. **Special Terms & Conditions:-**
- i. **Completion Certificate:**

The Contractor shall inform Owner in writing on completion of the Works as assigned in terms of this SO and request for a completion certificate. The completion certificate shall be issued by EIC when the Works are completed to the sole satisfaction of the Owner after taking into consideration of all the tests (if any) and the pre and post qualifications and acceptance criteria, which shall be decided by the Owner.
 - ii. **Safety Provisions:**
 - a. The Contractor shall be solely responsible for any injury to any person(s), animal(s), thing(s) or equipment(s) and for all damages to the property of the Owner/ others due to carelessness, negligence and/or mishandling, etc. of any equipment and/ or machinery on the part of the Contractor while carrying out the Works under this SO;
 - b. The Contractor shall provide its personnel with all safety gears (PPE) like safety helmets, belts, goggles, shoes, gloves, etc. as necessary for performing the Works. The PPE shall be of make approved by Owner.
 - c. The Contractor shall strictly observe and follow all the general Health, Safety and Security Rules of the State Govt. / Local Authorities/ Site.
 - d. Contractor shall follow the safety procedure and guidelines as per the instructions of EIC.
 - iii. All vehicles carrying ash outside plant boundary shall be covered with 400 GSM HDPE tarpaulin sheet.
 - iv. GPS Tracking Report of each trip of vehicles transporting Conditioned Fly Ash from Remote Silos (Loading station) to the designated dumping location must be submitted alongwith RA bills, failing which bills shall not be processed for payment
 - v. All necessary equipment tools and tackles and manpower required for completion of the Works shall be deemed to be included in the Contractor's Scope of Work.

- vi. Contractor shall work as per the guidelines of Owner representative/Project In charge;
- vii. Accommodation, lodging and boarding and local transportation of manpower deployed by the Contractor shall also be deemed to be included in the Contractor's Scope. Contractor to ensure safety of Free Issue materials after issuance from Owner's Store.
- viii. Contractor shall ensure that all the vehicles deployed by them have GPS installed and its access shall be provided to Owner's Engineer- In charge.
- ix. All the vehicles responsible for carrying ash shall obtain pollution under Control (PUC) certificate from appropriate authority. All the vehicle's drivers shall have required valid driving license issued by appropriate authority.
- x. In case of any accidental spillage on the way while transporting the ash; the agency shall ensure that the spilled ash is collected and transported to the disposal site.
- xi. In case, any accidental spillage on the way while transporting the ash is not collected and transported to the disposal site by the Contractor. Same shall be done by Owner at their risk and cost.
- xii. Speed limits shall be strictly enforced. Inside plant speed limit shall be 20 km/h.
- xiii. Liaisoning/Co-ordination with all local bodies, villagers, Govt. authorities etc. required for smooth execution of contract shall be in Contractor's Scope.
- xiv. In case, Liaisoning/Co-ordination with all local bodies, villagers, Govt. authorities etc. for smooth execution of contract is not done by Contractor as per terms of order, Owner shall take appropriate measures to remedy the situation.
- xv. **Diesel Price Escalation:** Diesel prices at Anuppur mentioned on website www.petroldieselpri.com will be acceptable to all for calculation purpose. Diesel will be 44% of the cost of per MT transportation & cost of per MT loading of Ash in rakes. Accordingly, following methodology will be adopted to determine the change in unit rate payable to Service Provider due to diesel price changes.
 - a. Base Diesel Rate is the rate at Anuppur location on the day of submission of bid and thereafter rate of Diesel on each subsequent Monday will be recorded to arrive at the new applicable rate. Diesel rates at Anuppur are to be downloaded from www.petroldieselpri.com each Monday by MBPMPL.
 - b. Reset of Diesel Rate: Every Monday, in case of variation in Diesel rates only.
 - c. Increase/decrease shall be applied to the Diesel Constituent (DC), i.e. 44% of the unit rate, for change of rate between base rate and the diesel rate on next Monday after the date of Service Order. Every subsequent Monday, percentage increase in diesel prices, if any, will

be added to DC of last week. The Remaining Constituent (RC) of the rate will be kept fixed.

The final transportation/rake loading rate per MT shall be arrived at as per following formula:

$$\text{Adjusted Transportation Price} = \text{DC} + (\text{DC} \times \% \text{Change in Unit Diesel rate}) + \text{RC}$$

| | |
|---|---|
| % Change in Unit Diesel rate | % difference in diesel rate between base rate and diesel rate on next Monday after the date of Service Order. |
| DC in the SO rate during 1 st week | 44% of Transportation rate |
| DC for subsequent weeks | Last week DC applicable + % Change in Unit Diesel rate |
| RC (56% of transportation rate) | Will remain same during the contract period |

10. **Time Schedule:** The contract period shall be 6 months from the date of this SO. Contractor shall mobilize at Site along with all tools, tackles and the required manpower within 15 days from the date of this SO.

11. **Commencement date of SO:** Date of this SO shall be considered as commencement date of the SO.

12. **Insurance:** The Contractor shall arrange for the necessary insurance cover for its tools and tackles along with the personnel engaged by it for the execution of the Works and accordingly shall be required to take out a comprehensive insurance policy under the Workmen's Compensation Act 1923 as amended from time to time. Owner shall not entertain any claim arising out of any mishap / mob / accident etc., which may take place during the course of execution of Works by the Contractor at the Site. The insurance policy shall protect the Contractor against all claims applicable under the Workmen's Compensation, 1923, the Public Liability Insurance Act, 1991, Employees State Insurance Act, 1948 and other relevant laws. The insurance policy taken by the Contractor shall cover adequate Third Party Insurance against liability for death and/or personal injury to any person, damage to any property, professional liability and other third party liabilities arising out the performance or non-performance of the services rendered by the Contractor in terms of this SO.

It is hereby clarified that irrespective of the requirements for insurance to be secured and maintained hereunder, any claim paid by insurance company or the failure of any insurance company to pay claims accruing, shall not affect, negate or waive any of the provisions of this SO, including the indemnity obligations of the Contractor.

13. **Arbitration:** If any dispute, of any kind whatsoever, arises between the parties hereto in connection with or arising out of this PO, the affected party may give a written notice to the other party of such dispute and they shall make every effort to resolve the dispute amicably by mutual

consultation within 30 (thirty) days of the date of such notice.

In the event the parties are unable to reach a settlement within 30 (thirty) days of receipt of notice as stated above, the parties agree to refer such dispute for arbitration.

Each party shall appoint one arbitrator and the two appointed arbitrators shall appoint the third arbitrator who shall act as a presiding arbitrator. If the two arbitrators are unable to appoint the third arbitrator within 30 (thirty) days, the third arbitrator shall be appointed in accordance with the provisions of the Arbitration and Conciliation Act, 1996, and modifications thereof

The seat and venue of such arbitration shall be at New Delhi. The language of such arbitration shall be English.

The arbitration shall, in all other respects, be conducted as per the Arbitration and Conciliation Act, 1996 and modifications thereof.

Notwithstanding any reference to arbitration herein, except as otherwise decided by the arbitrators, the Parties shall continue to perform their respective obligations.

Responsibility of payment for all costs of arbitration, except counsel fees, shall be as per the arbitration award.

No claim for interest will be entertained by the Owner with respect to any money or balances which may be in Owner's hands owing to a dispute between Owner and the Contractor or with respect of any delay on the part or the Owner in making interim or final payments or otherwise.

14. **Governing Law and Jurisdiction:** The SO shall be governed and construed in accordance with the Laws of India. The Courts situated at New Delhi will have exclusive jurisdiction for the purposes of actions, proceedings arising out of the SO.

15. **Representations and Warranties of the Contractor:** The Contractor hereby represents and warrants to the Owner that:
 - (i) It is a company duly organized, validly existing, and in good standing under the laws of its jurisdiction of incorporation, qualified to do business in all jurisdictions required in order for it to perform its obligations under this SO;
 - (ii) It is not in violation of any applicable law which violations, individually or in the aggregate, could reasonably be expected to affect Contractor's performance of any obligation under this SO. There are no legal or arbitration proceedings or any proceeding by or before any government authority now pending or (to its best knowledge) threatened against it which, if adversely determined, could reasonably be expected to have a material adverse effect on its financial condition, operations, prospects, or business, or in any impairment of its ability to perform its obligations under this SO;
 - (iii) The Contractor has all the permits and approvals that are required for performing its obligations in terms of this SO and that all such permits and approvals are effective as of the Effective Date and shall remain effective till the completion of its obligations in terms of this SO;
 - (iv) None of the execution and delivery of this SO or compliance with the terms and provisions hereof will conflict with or result in a breach of, or require any consent under, the

- constitutional documents of the Contractor or any applicable law or any agreement or instrument to which Contractor is a party or by which it is bound or to which it or any of its assets are subject, or constitute a default under any such agreement or instrument;
- (v) It has the legal capacity to execute, deliver, and perform its obligations under this SO; and the execution, delivery, and performance by Contractor of this SO falls within its corporate purpose and has been duly authorized by all necessary actions on its part; and this SO has been duly and validly executed and delivered by Contractor and constitutes its legal, valid, and binding obligation, enforceable in accordance with its terms;
 - (vi) It has and will have all the required authority, ability, skills, experience and capacity necessary to perform its obligations under this SO;
 - (vii) It has: (a) examined this SO (along with its annexures) and is familiar with the timelines and other key terms of the SO; (b) ascertained, is fully satisfied with and accepts the nature, scope, general and local conditions, and the nature and the location of the Project and the Site as well as suitability of the Site for the Works;
 - (viii) It has knowledge of all of the legal requirements and business practices that must be followed in performing all its obligations under this SO and all its obligations under this SO will be performed in conformity with such requirements and practices and in compliance with all applicable law, including all applicable labor and employment laws;
 - (ix) The individuals executing this SO on its behalf have been granted sufficient powers and authority to bind it pursuant to the terms and conditions of this SO;
 - (x) It has sufficient administrative and it is financially solvent and possesses sufficient working capital to complete its obligations under this SO.

16. General Terms & Conditions:-

i. Health & Safety measures

- a) The Contractor shall ensure proper safety of all the workmen, material, plant and equipment's belonging either to him or to any other contractor or to the Owner at the Site;
- b) The Contractor shall provide approved make safety items/ kits to its employees such as safety shoes, goggles, ear plugs, hand gloves, safety belts etc.;
- c) The Contractor shall report any accident immediately whether minor or major, fatal/non-fatal to the safety department of the Owner along with the statutory authorities as required under the applicable law;
- d) It is the responsibility of the Contractor to comply with all statutory regulations and ensure safety at all times;
- e) First Aid box shall be made available to the workmen by the Contractor.
- f) Where explosives are to be used, the same shall be used under the direct control and supervision of an expert, experienced qualified and competent person strictly in accordance with the code or practices/rule framed under Indian Explosives Act, pertaining to handling, storage and use of the explosives;
- g) The Contractor shall conduct pre-induction and periodic medical checkup of its workmen as per the applicable laws;
- h) The Contractor shall comply with all the safety, health and environment manual of the

Owner.

ii. Housekeeping

- a) Good Housekeeping shall be maintained at all times;
- b) Contractor shall ensure that the Works are done in a clean and orderly fashion and shall be responsible for maintenance and cleaning of its assigned part of the job-site. In view of this Contractor shall provide for containers, in which rubbish must be deposited. The containers shall be emptied by the Contractor at regular intervals as required and a minimum of once per week in conformance with the relevant laws and governmental regulations;
- c) Owner has the right to demand a general clean-up of the job-site when the Contractor does not comply with the cleaning instructions as requested.
- d) For such general site clean-up, the cleaning crew of Contractor will be at the disposal of the Owner without any additional compensation. Alternatively, the Owner may have the clean-up performed by another party at Contractor's cost and expense.
- e) Burning of waste is not allowed at the job-site without the prior written consent of the Owner.
- f) After the completion of Works, the Contractor shall leave its temporary facility area "broom clean".

iii. Contractor, Subcontractor and their Personnel

- a) The Contractor shall make its own arrangements for the engagement of all its staff and labour, local or otherwise, and for the payment of their housing, feeding and transport etc.
- b) The Contractor shall pay wages and observe conditions of labor, as favorable as those established for the trade or industry by the local Government, where the work is carried out. If no such established rates or conditions are applicable, the Contractor shall pay wages and observe conditions as favorable as the general level of wages and conditions observed by Owners whose trade or industry is similar to that of the Contractor.
- c) The Contractor shall comply with all the relevant labour laws of India applying to its employees and shall duly pay and afford them all their legal rights. The Contractor shall further require all such employees to adhere with all the applicable laws and regulations with respect to safety at work.
- d) Contractor shall act as an independent Contractor with respect to Works and neither the Contractor nor any sub-contractor or their employees, agents, representatives and servants of either, shall be deemed to be the employees, agents, representatives or servants of Owner.
- e) Contractor shall at all times ensure that the Works are carried out by an adequate organization under the supervision of a fully qualified and authorized representative appointed by the Contractor who shall be duly authorized to receive and carry out the instructions required or permitted under the contract to be given to the Contractor by EIC in writing. All such instructions given to and all acts done by such representative shall be binding on the Contractor.
- f) Contractor shall employ such personnel staff and labour, as will always be in a number and of a competence (including carefulness, skill and experience), adequate to carry out the Works in accordance with the SO and shall provide for the transport, housing and payment thereof. Upon written notification from the Owner, if action is not earlier

taken, the Contractor shall remove from the Site or the Work any of its personnel who do not meet the standards of experience, competency or comportment, or who otherwise may be a detriment to the Work and the Contractor shall ensure such personnel remain uninvolved with any aspect of the Works.

Should, in the opinion of Owner, at any time such personnel be inadequate and/or incompetent, then Contractor shall, without extra cost to Owner, provide additional or alternative competent personnel, and shall provide for the transport, housing and payment thereof.

- g) Contractor shall have complete control of the personnel engaged by it for the performance of Works and shall ensure that all such personnel, including all sub-contractors and their personnel shall comply with Owner's prevailing rules and regulations along with all the applicable laws, rules and regulations.
- h) Contractor shall maintain and shall ensure that sub-contractor shall maintain good industrial relations and Contractor shall ensure that Owner's interests in matters related to employee relations, including but not limited to, rates of pay, allowances, amenities, overtime, disciplines and grievance procedures shall not be prejudiced. Contractor shall, to the extent necessary, inform and consult EIC on such matters on its own initiative and in any case when the Owner so desires.

Contractor shall likewise maintain and shall ensure that any sub-contractor shall maintain goodwill among the various regulatory bodies and with the general public and, if necessary, shall consult EIC in this respect.

- i) Contractor shall not be entitled to enter into a sub-contract for the performance of all the Works, but shall, after having obtained prior written approval from EIC from case to case, enter into sub-contracts for the performance of parts of the Works.
- j) Contractor shall not be relieved from any obligation under the SO by entering into sub-contracts and Contractor shall be responsible for the acts, defaults and neglects of any of its sub-contractors, its employees, agents, representatives, servants or workmen as fully as if they were the acts, defaults or neglects of Contractor.
- k) No sub-contract shall bind or purport to bind the Owner and each sub-contract shall provide for the possibility of immediate termination in the event of discontinuation or termination of the SO.
- l) Personnel of Contractor's and of sub-contractor's shall only have access to the job-site if they are in possession of an approved pass. Contractor should consult with EIC on this matter before assigning its personnel. The pass shall not give any entitlement to access if access is not necessary for the performance of the Works. Upon the completion of the Work, passes made in the name of the Contractors personnel shall be returned to the Owner by the Contractor, immediately.
- m) During the execution of Work at site if the Contractor engages sub-contractors for execution of Works as approved with SO provisions and in the event of a sub-contractor complaining in writing to the Owner with regard to non-payment of their dues from the Contractor for materials or equipment supplied by them or the Work executed by them, Owner reserves the right to make such payments to the sub-contractor that are legitimate and payable based on approved measurements and with due notice to the Contractor. Owner shall release such payments on behalf of the Contractor to the sub-

contractor to ensure smooth execution of Works at Site. A procedure in this regard shall be mutually agreed. The payments, such as above, made to sub-contractors shall be recovered from payments due to the Contractor.

- n) The Owner/EIC may require the Contractor, by notice in writing, to remove (or cause to be removed) any person employed on the job-site, including the Contractor's Representative, who in the opinion of the Owner/EIC:
- persists in any misconduct;
 - is incompetent or negligent in the performance of his duties;
 - fails to conform with any provisions of the SO;
 - persists in any conduct which is prejudicial to safety, health, or the protection of the environment; or
 - other good and sufficient reasons.

iv. Materials

- a) Without prejudice to the Contractor's other obligations with respect to Contractor supplied material, Contractor shall ensure that all Contractor supplied material, shall be new, unused, of the correct design and workmanship, within the specifications, or if no such specification exists, fully suitable for the use intended, free from Defects ("**Defect**" means any item of the Scope of Supply that is not: (i) undamaged (ii) and free from any defect or fault in design, manufacturing, engineering, materials, workmanship in accordance with the terms of this Contract, or (iii) fit for its intended purpose.), in compliance with the applicable laws and shall be guaranteed for a minimum period of 24 months from the date of completion of the Works.
- b) Unless otherwise stipulated in the SO, all Contractor supplied material shall be purchased and transported to and on the job-site by the Contractor at its own cost and expense.
- c) Free Issue Materials: The Owner reserves the right to issue the materials , free of cost to the Contractor for use in the Works (if required as per SO). If the Owner selects to issue the said material free of cost to the Contractor (Free-Issue Materials), then the following terms and conditions will apply:
- Contractor and Owner shall agree in advance on the quantities of Free-Issue Material made available for the execution of Works. Contractor shall guarantee that the Free-Issue Material made available to it shall be used as economically as possible. Free-Issue Material shall be used only for permanent works. No Free-Issue Material shall be used for making temporary structures, platforms, templates, etc.
 - Contractor shall confirm the delivery and/or receipt of Free-Issue Material. If Owner, at any time, requests the return of Free-Issue Material, Contractor shall immediately comply with such request.
 - Contractor shall be responsible, at its own cost, for receiving, unloading and handling of the Free-Issue Material that are so delivered, including the transportation, unloading and handling of any part of such items to any other location where the Work is to be executed.
 - Contractor shall check and visually inspect all Free-Issue Material and supporting documentation. Contractor shall notify Owner in writing of any discrepancy or damage to Free-Issue Material within three (3) working days of receipt. In the absence of such notification, Free-Issue Material shall be deemed to have been delivered in a complete and undamaged state and any discrepancy

or damage that could have reasonably been discovered by Contractor pursuant to this clause shall be to the account of Contractor.

- Contractor shall return at its cost all-surplus Free-Issue Material to such place on Owner's premises which are designated as part of the job-site for that purpose by Owner and perform the administrative operations required therefore by Owner.
 - The Contractor shall keep proper account of use of all the Free-Issue Material and reconcile the same.
- Wastages as mentioned below shall be allowed, while re-conciliation of Free-Issue Material. In case, wastage is more than the below mentioned limit, charges towards additional wastage (beyond prescribed limit) of material shall be recovered from Contractor's bill.
 - Cement: 2% of the issued quantity
 - Reinforcement Steel: 3% of the issued quantity
- The Contractor shall not sell, or otherwise dispose of, or remove, except for the purpose of the Works, any sand, stone, clay, ballast, earth, rock or other substances of material which may be obtained from any excavation made in or upon the job-site at the time of obtaining the delivery or possession thereof and all such substances, materials, buildings and produce shall be, and shall continue to be, the property of the Owner, provided that the Contractor may, with the permission of the Owner, use the same for the purposes of the Works either free of cost or at such cost as may be determined by the Owner.

v. Contractor Supplied Materials

All input materials supplied or to be supplied by the Contractor shall conform to the specifications provided in this SO. EIC shall have the right to examine such goods/materials at the Site. However, such inspection or approval from Owner/EIC shall not relieve the Contractor from the obligation being set out under the SO.

Superfluous or rejected Contractor supplied material shall be removed by Contractor from the job-site at its own expense the first time that he is called upon to do so by Owner.

Royalty slips (wherever applicable) to be submitted by Contractors along with the bills.

vi. Equipment And Facilities

- a) Unless otherwise stipulated in the SO, Contractor shall be responsible for providing at its expense all the equipment. All Contractor's equipment shall, when brought on to the job-site, be deemed to be exclusively intended for the execution of the Works. The Contractor shall not remove from the Site any such Contractor's equipment without the consent of the Owner/EIC. Contractor shall be responsible for loss or damage to all of his or his sub-contractor's equipment, material, tool or other articles used or held for use in connection with the Works. Owner shall have no responsibility or liability for such equipment and tools of Contractor or its sub-contractors.

- b) Unless stipulated otherwise in the SO, Contractor shall itself carry-out the hoisting activities necessary for the execution of the Works at its own expense and risk.
- c) All material handling equipment shall have a valid safety certificate.
- d) All vehicles deployed by Contractor shall have valid RTO registration and drivers shall have valid driving license.
- e) If the said requirements are not met, or in doubtful cases, Owner shall be entitled to forbid the use thereof and the Contractor shall be bound to remove the equipment concerned from the job-site and to replace them, as soon as possible but not later than 14 days from the date of notice by the Owner, by such equipment that meet the requirements/ specifications. Any delay in the execution of Works arising as a result shall be the responsibility of Contractor and shall not be regarded as force majeure for Contractor. Inspection of equipment by Owner shall not relieve Contractor of any liability arising out of the use thereof.
- f) Unless stipulated otherwise in the SO, Contractor shall be responsible for providing at its expense office, stores, labour camp, bachelors' accommodation, workshop, fabrication yard, washing, changing, canteen, toilet and such other facilities, for its personnel.
- g) Owner shall provide construction water and construction power at one point on free of cost basis. Contractor shall make arrangements for further distribution of the same at its own cost.

vii. Indemnification

- a) Contractor shall protect, defend, hold harmless and indemnify the Owner, its directors, officers, EIC, employees, representatives from and against any action, cause of action, suits, accounts, dues, damages, claims, costs, demands whatsoever, either at law or in equity, judgments including costs and legal fees which may be rendered against Owner, and EIC, arising from any incident pertaining to:
 - All loss of and/or damage to properties of third parties, including the properties of employees of Owner;
 - All injuries (including death) to any and all persons;
 - Resulting from or relating to Contractor's or any subcontractor's performance of the Works, or resulting from or relating to Contractor's or any Subcontractor's failure to perform the Works in accordance with the SO notwithstanding that there may have been contributory negligence by the EIC, until the date of demobilization.
 - all injuries (including death) to its own and/or subcontractor's employees, servants, agents and/or representatives and for all loss of and/or damage to Contractor's and/or subcontractor's properties, Contractor's and/or subcontractor's employees, servants, agents and/or representatives, howsoever caused notwithstanding that there may have been contributory negligence by Owner and/or any of its representative.
- b) Without prejudice to aforesaid provision, the Contractor shall hold harmless and indemnify the Owner, its directors, officers, EIC, representatives, employees from and against all liens, attachments or claims, demands, losses, costs (including legal costs), expenses by subcontractors or any other persons in connection with or arising out of Works. Owner shall have the right to withhold the amount involved in the cost arising out of such lien, attachment or claim from any payment due to Contractor until removal of such lien, or attachment or settlement of such claim by Contractor.

- c) The Contractor hereby agrees to indemnify and keep indemnified and hold harmless at all times the Owner and its representatives against any loss, cost, expenses or damages suffered or incurred by it, by reason of the Contractor's failure to pay Taxes which it is obliged to pay in relation to the execution of its obligations under this SO and / or arising out of its failure to pay such Taxes.
- d) The Contractor shall fully indemnify, hold harmless the Owner and its representatives from and against any claim, demand, liability, action, proceedings, costs or expenses brought against the Owner or its representatives with respect to:
 - o Failure of the Contractor, any sub-contractor or any of their respective sub-Contractors to comply with applicable laws and applicable permits, prudent utility practices and good engineering practices;
 - o Any hazardous materials that the Contractor, any sub-contractor, or any of their respective sub-Contractors have at any time brought on and caused the release thereof on or from the Site or for which any of them is responsible by law or in the contract; or
 - o any infringement of any intellectual property by the Contractor or its sub-contractors;

viii. Suspension

- a) Owner may, at any time, suspend any part of Works, including all remaining Work, for any reason whatsoever, by giving a notice to the Contractor specifying the part of Work to be suspended and the effective date of suspension. Contractor shall cease all Works on said suspended part of Work on the effective date of suspension. Contractor shall continue to execute any unsuspended part of Work. Suspension, as aforesaid, shall not limit or waive Contractor's obligations or liabilities under the SO. During suspension, the Contractor shall protect, store, secure and insure such part or the Works against any deterioration, loss or damage.
- b) Unless the suspension is by reason of default or failure on the part of Contractor and the period of suspension is more than fifteen (15) days, then Contractor may apply to Owner for additional compensation consisting of:
 - o Costs of Contractor's employees whose retention on Work during the period of suspension has been authorised in advance by Owner.
 - o Costs of other items directly related to the suspended part of Work, but only if authorised in advance by Owner.
- c) Subject to above Owner shall not be held liable for any damages or any losses of anticipated profits or losses or damages whatsoever on the part of Contractor by reason of any suspension of the Works hereunder.
- d) Owner may, at any time, authorize resumption of all or any part of the suspended part of Work by giving notice to Contractor specifying the part of Work to be resumed and effective date of suspension withdrawal. Suspended Work shall be promptly resumed by Contractor after receipt of such notice. The Contractor shall make good any deterioration or defect in or loss of the Works, which has occurred during the suspension and shall resume the work.
- e) Without prejudice to Owner's rights, Owner shall be entitled on giving written notice to Contractor to suspend the whole or any part of the Works in the event of fault or failure of Contractor to carry out its obligations under this SO. In such event Contractor shall not be

entitled to compensation for expenditure of any nature incurred in connection with such fault or failure, including, but not limited to, expenditure during the period of suspension.

- f) Contractor shall continue to be liable for any loss/ damage/ injury during the suspension period.
- g) If the suspension is due to a cause attributable to the Contractor, the Contractor shall not be entitled to any extension of time for, or payment of the costs incurred in, making good any deterioration, defect or loss caused by faulty design, workmanship or materials, or by the Contractor's failure to take the measures specified in this SO.

ix. Termination

- a) Owner has the right at any time, at its absolute discretion, to terminate the Contract by giving notice of 01 (one) month of default. Such termination shall become effective immediately after delivery of written notice to Contractor or on such later date as specified in the notice.
- b) In the event of such notification to terminate the SO, Contractor shall either immediately or upon such other date as is specified in the notice:
 - o Discontinue its performance of Work;
 - o Assign to Owner, or its nominee to the extent required by Owner, all sub-contracts and other obligations and any rights and titles;
 - o Terminate all sub-contracts and other obligations not assigned to Owner pursuant to above.
 - o Enable Owner or its nominee, to take over Work so far completed and more specifically, all or the relevant part of the materials in Contractor's care, custody or control.
 - o Remove from the job-site all equipment provided by Contractor.
 - o Deliver to Owner, or its nominee, all erection plans, schedules, drawings, specifications and all other data prepared by Contractor or any sub-contractor in connection with the Works and all documents, drawings and other data supplied to Contractor by or on behalf of Owner in connection with Works.
- c) In the event of such termination Contractor shall be entitled to a sum of money representing:
 - o the total of the amounts actually due and payable under the SO for the part of the Works performed.
 - o The actual reasonable and auditable costs as accepted by Owner in as far as not already covered under a) above incurred by Contractor as a result of termination of the sub-contracts and other obligations vis-a-vis third parties.
 - o No compensation shall be paid for the loss of profit.

It is hereby acknowledged that no compensation shall be paid by Owner to Contractor if the SO is terminated on non-performance.

The Contractor shall have the right to terminate the SO in the event the Owner become insolvent or bankrupt by giving 03 (three) months' notice.

x. Force Majeure

- a) For the purpose of this SO, “Force Majeure” means the occurrence of any event or circumstance or combination of events or circumstances that is beyond the reasonable control of a party, has a material and adverse effect on the performance by that party of its obligations under or pursuant to this SO, and that demonstrably could not have been foreseen by the parties; provided, however, that such material and adverse effect could not have been prevented, overcome or remedied by the affected party through the exercise of diligence and reasonable care; but provided, further, that the exercise of diligence and reasonable care will not include the obtaining or maintaining of insurance beyond the requirements of this SO.
- b) Subject to clause (a) hereinabove, Force Majeure includes without limitation, the following events and circumstances, but only to the extent that each satisfies the above requirements as provided under Clause (a);
- Act of God,
 - fire, flood, earthquake, epidemic, pandemic, natural disaster or extreme natural event
 - war, riot, insurrection, civil commotion, mobilization or military, call up of a comparable scope, which has been notified in accordance with this clause any direction, judgment, decree or any other order passed by any judicial/quasi-judicial/administrative authority and/or any direction passed by the government authority/(ies) restraining the performance of obligations, whether in part or in full, of the affected party provided that such orders or directions must not emanate out of actions directly attributable to the affected party or
 - any event owing to any restrictions, directives/directions imposed or passed by the government, judicial, quasi-judicial authorities if they impede or delay the performance of the Agreement (Force Majeure Events).
- c) **FORCE MAJEURE EXCLUSIONS:** Force Majeure will expressly not include the following conditions, except and to the extent that they result from an event or circumstance otherwise constituting Force Majeure:
- unavailability, late delivery or changes in cost of machinery, equipment, materials, spare parts or consumables;
 - prevailing weather conditions at the place of performance of the services/works, including during monsoon periods;
 - failure or delay in performance by any Subcontractor;
 - normal wear and tear or flaws in materials and equipment or breakdowns in equipment.
 - any labour unrest/strikes or any other event of the like nature caused by the Contractor (which includes its subcontractors) shall not be considered as a force majeure occurrence; and
 - unavailability of financing or sufficient cash flow for procurement of material;
- d) In the event of a Force Majeure occurrence, the party that is or may be delayed in performing its obligations under this SO shall notify in writing to the other party without delay but not later than fifteen (15) business days on the initiation of such Force Majeure

Event(s) and shall use diligent efforts to end the failure or delay in performance to minimize effects of such Force Majeure Event. Provided, however, that the occurrence of such an event would entitle the parties to renegotiate the time frame for performance of the respective obligations, taking into consideration the nature of such event. In such a situation, the party, which is not able to perform its obligations under this SO on account of Force Majeure Event(s), shall not be liable to the other party for the default or breach of this SO for the period of failure or delay. If the said notice is not received by the other party within fifteen (15) business days, after the party who fails to perform knew or ought to have known of the impediment, it is liable for damages resulting from such non-receipt.

- e) Both Parties agree to use their respective reasonable efforts to cure any event of Force Majeure to the extent that it is reasonably possible to do so. Upon the cessation of the event of Force Majeure, the party declaring Force Majeure shall immediately but not later than three (3) business days give notice thereof to the other party.
- f) Neither Party shall be liable in any manner whatsoever to the other party in respect of any loss, damage, costs, expense, claims, demands and proceedings relating to or arising out of occurrence or existence of any Force Majeure Event or exercise of any right pursuant hereof. The costs associated with taking all steps required to mitigate the effects of the Force Majeure Event and restore its ability to perform its obligations under this Agreement as soon as reasonably practicable shall be borne by the respective parties.

xi. Consequential Damages

- a) Contractor shall not be liable, except under circumstances as specified in Clause N(ii) below, for loss of anticipated profits and any other consequential damages to Owner resulting under this SO.
- b) The exclusions of liability as per the above clause a shall not apply if and to the extent the damage(s) in question are:
 - o Recovered from insurance provided that Contractor can demonstrate to Owner that Contractor has used its best endeavors to recover what is recoverable under said insurance; and/or
 - o Caused by an act or omission of Contractor's management and/or supervisory personnel acting with the intent to cause damage, or recklessly and with knowledge that damage would probably result.
 - o Any obligation of the Contractor to pay penalty to the Owner under this SO.
- c) Owner shall not be liable for any consequential, indirect, remote or special damages or loss of anticipated profits sustained by Contractor or its sub-contractors.

xii. Severability : If any of the terms, covenants or conditions hereof or the application of any such term, covenant or condition shall be held invalid or unenforceable as to either party or as to any circumstance by any court or arbitrator having jurisdiction, the remainder of such terms, covenants or conditions shall not be affected thereby, shall remain in full force and effect and shall continue to be valid and enforceable in any other jurisdiction. In such event, the parties shall negotiate in good faith to substitute a term, covenant or condition in this SO to replace the one held invalid or unenforceable by a mutually agreed amendment to this SO with a view

towards achieving a valid and enforceable legal and economic effect as similar as is then reasonably possible to that originally provided for in this SO.

xiii. Assignment and Step In Rights: Contractor shall not assign novate or charge the whole or any part of the SO or create any encumbrance over any part of the work to be performed under this SO, without the prior written consent of the Owner.

The Owner shall be entitled to assign and/or transfer its rights and obligations under the SO in favor of any person including without limiting the project lenders, without requirement of any consent of the Contractor. The project lenders may exercise their step-in/substitution rights in accordance with the financing agreement(s) for the project, provided that they comply with and adhere to the provisions of the SO.

Owner shall be entitled to assign and/or transfer/terminate the rights of the Contractor stipulated in the SO, in the event the Contractor does not perform to the satisfaction of Owner. Any additional expenses incurred by Owner for completing the job shall be recovered from the unpaid invoices of the Contractor or securities available with Owner.

xiv. RISK PURCHASE: In the event of delay in completion of the Works by the Contractor within the stipulated timeframe agreed between the parties herein or in the event of any breach of any of the terms and conditions stated in this SO, the Owner shall have the right to: (i) impose Liquidated Damages; (ii) engage any other agency, parallel to the Contractor, to complete part of the balance supply and works at the risk and cost of the Contractor; or (iii) cancel the SO and get the balance supply and works done from any other agency at the sole risk and cost of the Contractor. It is clarified that the additional cost and expenses so incurred by the Owner in procuring the whole or part of works as stated in this SO shall be liable to be recovered from the charges payable to the Contractor in terms of this SO.

xv. WAIVER: A failure or delay in exercising any right, power or privilege in respect of this SO will not be presumed to operate as a waiver, and a single or partial exercise of any right, power or privilege will not be presumed to preclude any subsequent or further exercise, of that right, power or privilege or the exercise of any other right, power or privilege. All waivers under this SO shall be made in writing

xvi. MISCELLANEOUS

- a) This SO shall prevail over any other terms or conditions contained in the invoices/bills of the Contractor or any other document executed between the parties prior to the date of this SO;
- b) Nothing contained in this SO shall be deemed to create the relationship of an employer and employee, master and servant, franchisor and franchisee, partnership or joint venture between the parties hereto;
- c) No modifications of this SO shall be valid unless the same is agreed in writing by the parties hereto and issued as an amendment to the SO;
- d) All notices required to be given pursuant to the provisions of the SO shall be in writing and delivered by either of the following 3 (three) modes: (i) hand delivery; (ii) speed

post/Courier and (iii) E-mail, to the address designated by the party by written notice to the other parties and shall be deemed to have been duly received upon the occurrence of either of following: (i) in respect of hand delivery, when delivered (ii) in respect of speed post/courier, on expiry 10 of (ten) Business Days thereafter, (iii) in respect of email, on receipt of a confirmation.