



बृहन्मुंबई महानगरपालिका
Municipal Corporation of Greater Mumbai



Mithi River Water Quality Improvement Project

Package 3: Dry Weather Flow Interception at Tidal Outfalls (including Gate Pumps), Transfer Sewer, Training of River (Retaining Wall & Service Road), Beautification including Promenades and Allied Works from Prem Nagar Outfall, Kurla to Mahim Causeway

Design Build Operate Contract

Volume 1 - Conditions of Contract

Employer:
Municipal Corporation of Greater Mumbai
Municipal Head Office Building, Mahapalika Marg,
Fort, Mumbai - 400 001.

Consultant:
Frischmann Prabhu (India) Pvt. Ltd.
315, Balgovind Wadi, New Prabhadevi Road,
Prabhadevi, Mumbai - 400 025



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1 INTRODUCTION

This volume contains the Particular Conditions of Contract for the Improvement of Water Quality to the Mithi River Design, Build and Operate (DBO) Contract.

1.1 Conditions of Contract

The Conditions of Contract comprise:

- the “General Conditions” which are the “Conditions of Contract for Design, Build and Operate Projects First Edition 2008” published by the Federation Internationale des Ingenieurs-Conseils (FIDIC) (the “FIDIC Gold Book”);
- “Particular Conditions Part A – Contract Data”; and
- “Particular Conditions Part B – Special Provisions”, which include amendments and additions to such General Conditions.

2 PARTICULAR CONDITIONS PART A – CONTRACT DATA**2.1 Contract Data**

FIDIC Gold Book (General Conditions) Provision	Description of Item	Data
1.1.24	Where the Contract allows for Cost Plus Profit, percentage profit to be added to the Cost:	5%
1.1.26	Cut-Off Date (number of days after the Time for Completion of Design-Build):	90 days
1.1.32	Employer's name and address:	Municipal Commissioner BMC Head office, Mahapalika Marg, Fort, Mumbai – 400 001
1.1.35	Employer's Representative's name and address:	The Chief Engineer (Storm Water Drains) Municipal Corporation of Greater Mumbai, Zero Floor, Engineering Hub Building, Worli Naka, Mumbai – 400 018
1.1.70	Parts of the Works that shall be designated a Section for the purposes of the Contract:	Not Applicable
1.3 (c)	Agreed methods of electronic transmission:	Facsimile, E-mail
1.3 (d)	Address of Employer for communications:	Municipal Commissioner BMC Head office, Mahapalika Marg, Fort, Mumbai – 400 001
1.3 (d)	Address of Employer's Representative for communications:	The Chief Engineer (Storm Water Drains) Municipal Corporation of Greater Mumbai, Zero Floor, Engineering Hub Building, Worli Naka, Mumbai – 400 018

FIDIC Gold Book (General Conditions) Provision	Description of Item	Data
1.3 (d)	Address of Contractor for communications ¹ :	
1.4	Contract shall be governed by the law of:	India
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:	28 Days
4.2	Performance Security (Performance Bank Guarantee) (as percentages of that portion of the Accepted Contract Amount attributable to the Design-Build of the Works in Currency):	
	Percent: Currency: Reduction in performance security Validity Other conditions	-10 % - Indian Rupees - 7% (at the end of 5 th year of O&M Performance bank guarantee should be reduced to 3%) - Till issue of Contract Completion certificate (Performance bank guarantee shall be renewable every 3 year) - Applicable stamp duty under the Government of Maharashtra Stamp Act shall be paid by the contractor for first issue of guarantee and for any renewals/ changes of the bank. - In addition to above, the Original Equipment Manufacturer / Technology Provider of lowest bidder shall submit 2% Performance Guarantee for the entire contract period (i.e. Design Build & Operation services) and the same shall be valid till the issuance of completion certificate.

5.1	Period for notification of errors, faults and other defects is:	56 days
6.5	Normal working hours on the Site:	08:00 to 18:00 However, specific sanction shall be obtained of Ch.E.(SWD) to carry out the work during night time, Sundays and holidays.
8.2	Period of the Operation Service:	10 years It is obligatory to rectify the defects within reasonable time frame without any cost to MCGM that appears during operational period for civil as well as M&E works.
9.2	Time for Completion of Design-Build:	36 months (Inclusive of monsoon) Monsoon period :- 10 th June to 30 th September.

FIDIC Gold Book (General Conditions) Provision	Description of Item	Data
9.6	Delay damages (amount per day of delay):	INR 10 lakh per day
9.6	Maximum amount of delay damages (percent of portion of the final Contract Price associated with the Design-Build of the Works):	10%
10.6a	Maximum compensation payable by Contractor:	5% of contract price.
10.6b	Maximum compensation payable by Employer:	Nil.
10.7	Performance damages:	Refer to Volume 3 Schedule of Payments, Section 12.
10.7	Rights of Employer if failure continues for more than 84 days:	As per Clause 10.7 of Conditions of Contract
10.7	Minimum production outputs required:	As per Volume 2 Employer's Requirements
13.5	Percentage rate to be applied to Provisional Sums:	5%
14.2	Amount of Advance Payment:	10% of contract cost of Design Build only, against 14% of Bank Guarantee and simple interest of 12%, valid till the completion of Design-Build Period or full recovery of Advance Payment, whichever is earlier. The interest on the amount paid as advance is chargeable from date of amount paid.

FIDIC Gold Book (General Conditions) Provision	Description of Item	Data
14.3	Percentage of Retention:	Percentage of Retention money 1. For DB Part – 5% from each payment application. 2. For O & M Part- 5% from each payment application Limit of Retention Money 1. For DB Part – 5% from each payment application. 2. For O & M Part- 5% from each payment application NOTE : DB – Design Build (O&M- Operation and Maintenance)
14.6(c)(i)	Plant and Materials for payment when delivered to the Site:	As per “Form for Plant and Materials for payment when delivered to site” if included in the Tender Submission Extracts.
14.7(b)	Minimum Amount of Interim Payment Certificate:	Only one interim payment application per month irrespective of amount (except for Asset Replacement Schedule) For Asset Replacement Schedule, one interim payment application per every month as per Asset Replacement Schedule
14.9	Financing charges for delayed payment:	Nil
14.17	Currencies for payment of Contract Price:	INR (Indian Rupee)
14.17	Proportions of Local and Foreign Currencies are:	Not Applicable
14.19	Maximum Amount of Maintenance Retention Fund:	DELETED.
17.1	Operation of forces of nature allocated to the Contractor:	None

17.8	Total Liability of the Contractor shall not exceed:	125% of that portion of the Accepted Contract Amount attributable to the Design-Build of the Works for the period extending until 5 years after the date of issue of the Commissioning Certificate, at which point the Total Liability of the Contractor shall reduce to 50% of the Accepted Contract Amount attributable to the Design-Build of the Works until Contract Completion.
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FIDIC Gold Book (General Conditions) Provision	Description of Item	Data														
19.2		<table border="1" data-bbox="624 524 1394 1099"> <thead> <tr> <th data-bbox="630 524 1038 622">Insurance for Design-Build Period</th> <th data-bbox="1038 524 1388 622">Amount</th> </tr> </thead> <tbody> <tr> <td data-bbox="630 622 1038 741">Professional Indemnity Insurance</td> <td data-bbox="1038 622 1388 741">10% of replacement cost of Design-Build of the Works</td> </tr> <tr> <td data-bbox="630 741 1038 860">Contractor's All Risks Insurance</td> <td data-bbox="1038 741 1388 860">115% replacement cost of Design-Build of the Works</td> </tr> <tr> <td data-bbox="630 860 1038 909">Public Liability Insurance</td> <td data-bbox="1038 860 1388 909">INR 10 Crore</td> </tr> <tr> <td data-bbox="630 909 1038 994">Employer's Liability Insurance</td> <td data-bbox="1038 909 1388 994">INR10Crore</td> </tr> <tr> <td data-bbox="630 994 1038 1043">Third party Liability Insurance</td> <td data-bbox="1038 994 1388 1043">INR 5 Crore</td> </tr> <tr> <td data-bbox="630 1043 1038 1099">Motor Insurance</td> <td data-bbox="1038 1043 1388 1099">As per local regulations</td> </tr> </tbody> </table> <p data-bbox="624 1155 1318 1323"><i>Policies to have a maximum deductible of 5%;</i> <i>Policies should payout for multiple incidents up to the maximum of total insured amount;</i> <i>MCGM will be the joint beneficiary on the policies.</i></p>	Insurance for Design-Build Period	Amount	Professional Indemnity Insurance	10% of replacement cost of Design-Build of the Works	Contractor's All Risks Insurance	115% replacement cost of Design-Build of the Works	Public Liability Insurance	INR 10 Crore	Employer's Liability Insurance	INR10Crore	Third party Liability Insurance	INR 5 Crore	Motor Insurance	As per local regulations
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19.2(f)	<p data-bbox="624 1335 1235 1417">Other insurances required from the Contractor: Insurance Against Accident to Workmen</p>	<p data-bbox="624 1435 1455 2002">The Contractor shall also take out a Personal Accident Insurance Policy in favour of each workman employed by him on any job pertaining to the Contract. The Contractor shall ensure that similar Personal Accident Insurance Policy is taken out in respect of each workman employed by his Subcontractors, if any. All such policies in favour of the workmen of the Contractor as well as its Subcontractors shall be registered by the Contractor in the office of the Employer, before the commencement of the Works. If the Contractor fails to take out the Personal Accident Insurance Policy as set out in this Sub-Clause and any accident occurs, an equivalent amount equal to the compensation payable under the Personal Accident Insurance Policy, according to the nature of accident, will be deducted from the bills payable to the Contractor for the work done or from any other dues payable to the Contractor, and kept in a deposit account to be paid ultimately to the injured person or to the heirs in case of death.</p>														

FIDIC Gold Book (General Conditions) Provision	Description of Item	Data														
	Insurance under a Personal Accident Insurance Policy will be additional to any other Insurance required under the Conditions of Contract.															
19.2(f)	<p>Other insurances required from the Contractor: Insurance of Employer's site staff</p> <p>The Contractor shall also, without limiting his or the Employer's obligations, insure in the joint names of the contractor and employer, 20 of the Employer's and consultant's staff engaged on the Works at the site against liabilities for death or injury. The amount of the insurance cover for each of the Employer's and consultant's site staff so engaged shall be Rs. 5,00,000/.</p> <p>The insurance shall continue until the end of the Design-Build Period.</p>															
19.3(a)	Amount of fire extended cover insurance required:	Full replacement cost of Design-Build														
19.3	<table border="1" data-bbox="624 1048 1394 1641"> <thead> <tr> <th data-bbox="630 1057 943 1167">Insurance for Operation Service Period</th> <th data-bbox="943 1057 1388 1167">Amount</th> </tr> </thead> <tbody> <tr> <td data-bbox="630 1167 943 1254">Contractor's All Risks Insurance</td> <td data-bbox="943 1167 1388 1254">Full replacement cost of Design-Build of the Works</td> </tr> <tr> <td data-bbox="630 1254 943 1341">Public Liability Insurance</td> <td data-bbox="943 1254 1388 1341">Rs.10 Crore</td> </tr> <tr> <td data-bbox="630 1341 943 1429">Employer's Liability Insurance</td> <td data-bbox="943 1341 1388 1429">Rs 10 Crore</td> </tr> <tr> <td data-bbox="630 1429 943 1473">Motor Insurance</td> <td data-bbox="943 1429 1388 1473">As per local regulations</td> </tr> <tr> <td data-bbox="630 1473 943 1561">Professional Indemnity Insurance</td> <td data-bbox="943 1473 1388 1561">10% of replacement cost of Design-Build of the Works</td> </tr> <tr> <td data-bbox="630 1561 943 1641">Environmental Impairment Insurance</td> <td data-bbox="943 1561 1388 1641">Rs 5 Crore</td> </tr> </tbody> </table> <p><i>Policies to have a maximum deductible of 5%;</i> <i>Policies should payout for multiple incidents up to the maximum of total insured amount;</i> <i>MCGM will be the joint beneficiary on the policies.</i></p>	Insurance for Operation Service Period	Amount	Contractor's All Risks Insurance	Full replacement cost of Design-Build of the Works	Public Liability Insurance	Rs.10 Crore	Employer's Liability Insurance	Rs 10 Crore	Motor Insurance	As per local regulations	Professional Indemnity Insurance	10% of replacement cost of Design-Build of the Works	Environmental Impairment Insurance	Rs 5 Crore	
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19.3(e).	<p>Other insurances required from the Contractor: Insurance Against Accident to Workmen</p> <p>The Contractor shall also take out a Personal Accident</p>															

FIDIC Gold Book (General Conditions) Provision	Description of Item	Data
	<p>Insurance Policy in favor of each workman employed by him on any job pertaining to the Contract as well as employer staff (up to 10 persons) on the project. The Contractor shall ensure that similar Personal Accident Insurance Policy is taken out in respect of each workman employed by his Subcontractors, if any. All such policies in favor of the workmen of the Contractor as well as its Subcontractors shall be registered by the Contractor in the office of the Employer, before the commencement of the Works. If the Contractor fails to take out the Personal Accident Insurance Policy as set out in this Sub-Clause and any accident occurs, an equivalent amount equal to the compensation payable under the Personal Accident Insurance Policy, according to the nature of accident, will be deducted from the bills payable to the Contractor for the work done or from any other dues payable to the Contractor, and kept in a deposit account to be paid ultimately to the injured person or to the heirs in case of death.</p> <p>Insurance under a Personal Accident Insurance Policy will be additional to any other Insurance required under the Conditions of Contract.</p>	
20.3	Date for appointment of DAB:	Within 28 days after the Commencement date
20.3	The DAB shall comprise:	3 members, each to be based in India
20.4	Appointing entity (official) or DAB members, if not agreed:	President of Institute of Engineers of India
20.8	Language of arbitration:	English

¹ To be inserted once Contractor has been identified

3 PARTICULAR CONDITIONS PART B – SPECIAL PROVISIONS

3.1 Amendments

FIDIC Gold Book Special Conditions Provision	Item	Amendment
1.1.4	Auditing Body	Delete this Sub-Clause in its entirety.
1.1.5	“Base Date”	Delete Sub clause and replace with: “Base Date” means: 28 days prior to the latest date of submission of the bid.
1.1.10	Contract	Delete this Sub-Clause and replace with: “Contract” means: a) Contract Agreement; b) Letter of Acceptance; c) Volume 1 – Conditions of Contract consisting of: A) the “General Conditions” which are the “Conditions of Contract for Design, Build and Operate Projects First Edition 2008” published by the Federation Internationale des Ingenieurs - Conseils (FIDIC), as amended by the Particular Conditions Part A and the Particular Conditions Part B; B) Particular Conditions Part A – Contract Data; and C) Particular Conditions Part B – Special Provisions; d) Volume 2 – Employer’s Requirements; e) Volume 2 A, B, C, D, E– General Technical Specifications & Drawings; f) Volume 2 F: Operation & Maintenance of pumping station g) Volume 3 – Schedule of Payments; h) Volume 4 – Contract Forms; and i) Tender Submission Extracts.
1.1.43	Financial Memorandum	Delete this Sub-Clause in its entirety.
1.1.57.1	Operation Service Monitoring Group – NEW	Add New Sub-Clause: “Operation Service Monitoring Group” has the meaning set out in the Employer’s Requirements.

1.1.60	Performance Security	Delete the definition of "Performance Security" and replace with: "Performance Security" means the security under Sub Clause 4.2 [Performance Security] which is also referred to as "Performance Bank Guarantee" within the Contract.
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FIDIC Gold Book Special Conditions Provision	Item	Amendment
1.1.66	Retention Period	Delete the definition of "Retention Period".
1.1.72	Site	Add the following to the end of the sentence: but "Site" shall exclude final disposal sites for wastewater sludge or screenings disposal.
1.1.75	Tender	Delete the definition of "Tender" and replace with: "Tender Submission" means the Contractor's response to the Employer's tender process which preceded this Contract.
1.1.75.1 – NEW	Tender Submission Extracts	Add New Sub-Clause: "Tender Submission Extracts" means those portions of the Contractor's Tender Submission in the tender process which preceded this Contract (including, for clarity, forms submitted as part of the Contractor's Tender Submission) which the Employer, in its sole discretion, wishes to include as a schedule to this Contract.
1.1.83	year	Delete the wording of the Sub-Clause and insert the following: "year" means 365 days or 366 days in a leap year.
1.5	Priority of Documents and Inconsistencies	Change the title of the section to "Priority of Documents and Inconsistencies" Delete the wording of the Sub-Clause and replace with the following: The documents forming the Contract are to be taken as mutually explanatory of one another. For the purposes of interpretation, the priority of the documents shall be in accordance with the following sequence: a) Contract Agreement; b) Letter of Acceptance c) Addenda and Corrigendum d) Particular Conditions – Part A (Contract Data); e) Particular Conditions – Part B (Special Conditions); f) Schedule of Payments; g) General Conditions of Contract (FIDIC Gold Book);

FIDIC Gold Book Special Conditions Provision	Item	Amendment
		<p>h) Contract Forms; i) Employer's Requirements, j) General Technical Specifications; and k) Drawings; l) Tender Submission Extracts.</p> <p>In the event of any ambiguities, conflicts or inconsistencies between or among standards or requirements set out in the Tender Submission Extracts, the remainder of the Contract (including the Employer's Requirements) and applicable Law, the most stringent standards or requirements shall govern and take precedence over the lower standards or requirements.</p> <p>If either party becomes aware of any conflict or inconsistency between or within any of the documents forming this Contract or any requirement thereof or any instruction issued hereunder, that party shall promptly inform the other of the conflict or inconsistency. Thereafter, the parties shall meet, discuss in good faith and use reasonable effort to agree to the manner in which the conflict or inconsistency is to be resolved.</p> <p>Failing such agreement, the matter shall be determined by the Employer's Representative in his absolute discretion, and any such determination shall, notwithstanding the Dispute resolution clause, be final and binding on the parties. It is expressly acknowledged by the Contractor that in no circumstances will any such conflict and/or inconsistency (or its resolution) give rise to an entitlement on the part of the Contractor to an adjustment to the Contract Price and/or an extension of time and/or any other payment whatsoever.</p>
1.6	Contract Agreement	<p>Delete the final word of this clause, "Employer", and replace with "Contractor".</p> <p>Add the following to the end of the sub-clause:</p>

FIDIC Gold Book Special Conditions Provision	Item	Amendment
		The Contractor shall bear the stamp duty on the Contract as per prevailing rate and legal and stationery charges for preparation of the Contract Agreement as ruling on the date of execution of the Contract.
1.8	Assignment	<p>Delete the wording of the Sub-Clause and replace with the following:</p> <p>The Employer may, for reasons of re-organisation of the Employer's responsibilities and powers or otherwise, wish to restructure or adjust elements of the Contract including in particular, but not limited to, the assignment or transfer or novation of the Contract by the Employer to an associated body or entity (such a body may be a local or national government agency or a corporate body or any other outsourced entity). The Contractor agrees to co-operate with the Employer in any restructuring or adjustments to the Contract.</p> <p>In the event of a restructuring involving the assignment, transfer or novation of the Contract by the Employer to an associated body or entity, the Contractor shall thereafter continue to perform all obligations and responsibilities in accordance with the Contract on behalf of the new Employer who shall, thereafter, undertake the obligations, responsibilities and entitlements of the Employer.</p>
1.14	Compliance with Laws	<p>Delete the wording of the Sub-Clause and replace with the following:</p> <p>Except for any approvals already obtained by the Employer, the Contractor shall obtain all permits, licenses and approvals in respect of all matters arising in the performance of the Contract. The Contractor shall comply with, give all Notices under, and pay all fees required by, the provisions of any national or state statute, ordinance or other applicable law, or any regulation of any legally constituted public authority having jurisdiction over the Works. The Contractor shall obtain all permits, licenses and approvals required for any part of the Works in reasonable time taking into account of the times for delivery of the Plant and Materials and for completion of the Works. In addition to</p>

FIDIC Gold Book Special Conditions Provision	Item	Amendment
		<p>complying with all applicable Laws of India in the performance of the Design-Build and the Operation Service, if the Contractor performs any work pertaining to this Contract outside of India the Contractor shall comply with the Laws of each country where activities are performed. During the term of the Contract, the Contractor shall be deemed to be the “occupier” and “manager” of a “factory” within the meaning of the Indian Factories Act, 1948.</p> <p>Details of any permits, licences and approvals already obtained by the Employer are indicated in the Employer Requirements. The Contractor shall make its own judgment as to the completeness and sufficiency of such permits, licences and approvals in the context of his own completion of the Works.</p> <p>The Contractor shall at all times and in all respects comply with, give all Notices under, and pay all fees required by any permit, licence or approval obtained by the Employer in respect of the Site or the Works, and whether relating to the Works on or off the Site.</p>
1.15	Joint and Several Liability	<p>Delete the wording of the Sub-Clause and replace with the following:</p> <p>If the Contractor constitutes (under applicable Laws), or submitted its Tender Submission in the tender process which preceded this Contract as, a joint venture, consortium or other incorporated or unincorporated grouping of two or more persons:</p> <ol style="list-style-type: none"> a) these persons shall be deemed to be jointly and severally liable to the Employer for the performance of the Contract; b) these persons shall notify the Employer of their leader who shall have authority to bind the Contractor and each of these persons; and c) the Contractor shall not alter his composition or legal status without the prior consent of the Employer.
2.1	Right of Access to Site	<p>Add the following at the end:</p> <p>The right of access (either with penalties prescribed under the clause 9.14 or without the same) / possession handed over to the Contractor</p>

		<p>of the site does not in anyway create a tenancy or ownership right in any manner for the Contractor on the original land or any additional land that may be added to the site by the Employer.</p> <p>Add the following at the end of the Clause:</p> <p>No financial claims shall be paid to the Contractor for not providing right of access, fully / partly, irrespective of the reason, whether it is eligible for an extension of time under the Contract or not.</p>
2.2	Permits, Licenses or Approvals	<p>Add the following paragraph at the end of this Sub-Clause:</p> <p>However, the Employer shall not be liable to the Contractor for any loss resulting from clearance being delayed or refused.</p>

FIDIC Gold Book Special Conditions Provision	Item	Amendment
2.4	Employer's Financial Arrangements	Delete this Sub-Clause in its entirety. The project is financed by MCGM from in-house resources.
3.1	Employer's Representative	Add the following at the end of this Sub-Clause: The Employer's Representative shall obtain the specific approval from the Employer before taking action in accordance with the following: a) sub-clause 13.1 [Right to Vary] for Variations valued more than 0.5% of the Design-Build portion of the Accepted Contract Amount; and b) once the cumulative amount of Variations has reached 5% of the Design-Build portion of the Accepted Contract Amount, all Variations in accordance with sub-clause 13.1 [<i>Right to Vary</i>].
4.1	The Contractor	Add the following at the end of this Sub-Clause: The Contractor shall at all times be an independent Contractor. The Employer shall have no responsibility with respect to the obligations assumed by the Contractor and nothing in this Contract shall be deemed to constitute an agency, partnership or create any fiduciary relationship between the Employer and the Contractor.
4.2	Performance Security	Add the following at the end of the Sub-Clause: If provision of the Performance Security requires the payment of any levy, tax, stamp duty or royalty then such payment shall be at the expense of the Contractor.
4.4	Subcontractors	Replace paragraph (b) with: "the prior consent of the Employer's Representative shall be obtained to other proposed Subcontractors including the scope, terms, and conditions of the proposed subcontract; which shall not be more than 25 % of contract price; and"
4.7	Setting Out	Delete the wording of the Sub-Clause and replace with the following: The Contractor shall set out the Works in relation to original points, lines and levels of reference

FIDIC Gold Book Special Conditions Provision	Item	Amendment
		<p>specified in the Contract or notified by the Employer's Representative. The Contractor shall be responsible for the correct positioning of all parts of the Works, and shall rectify any error in the positions, levels, dimensions or alignment of the Works.</p> <p>The Contractor shall also be responsible for the verification of all reference levels and datum provided in the Contract Documents during the design of the works.</p>
4.10	Site Data	<p>Delete the title and wording of the Sub-Clause and replace with the following:</p> <p>4.10 Site and Additional Data</p> <p>The Contractor acknowledges and agrees that, prior to the Base Date, the Employer,</p> <p>a) provided non-binding background information to the Contractor during the tender process that preceded this Contract, including the information set out in a separate volume of background site and additional technical information; and</p> <p>b) made relevant and readily available data which was in the Employer's possession on sub-surface, hydrological and climatic conditions at the Site, including environmental aspects, available to the Contractor, for the Contractor's information.</p> <p>The Contractor shall be responsible and bear all liability for the interpretation and use of all such data referred to in this Sub-Clause 4.10 provided by the Employer prior to and after the Base Date (collectively, the "Data").</p> <p>All Data provided by the Employer, including any background information provided by the Employer during the tender process that preceded this Contract is indicative and for the information of the Contractor only, and any reliance by the Contractor on the Data shall be at the Contractor's own risk. The Contractor shall be deemed to have inspected and examined the Site for the purpose</p>

FIDIC Gold Book Special Conditions Provision	Item	Amendment
		<p>of preparing the Tender Submission and the Schedule of Payments, and is deemed to have made all sufficient enquiries to satisfy himself with respect to the accuracy, completeness and fitness for purpose of the Data, the existing structures and facilities, the Site conditions and ground conditions and other surroundings and utilities, including, but not limited to, the following matters:</p> <ol style="list-style-type: none"> a) the form and nature of the Site, including the above ground and sub-surface conditions, the existing structures and facilities, utilities and other installations; b) the hydrological and climatic conditions; c) the extent and nature of the work and Materials necessary for the execution and completion of the Works, and the remedying of any defects; d) the means of access to the Site and the accommodation he may require; e) the adequacy, suitability and reliability of the data provided for use in preparation of his Tender Submission and execution of the Works, f) Works necessary in obtaining and due compliance with all necessary consents, permissions, licences, easements and statutory requirements in order to execute the Works; any interference or disruption to the Works caused by third parties; and g) any nuisance, interference and compliance with directions from statutory and public bodies. <p>The Employer provides no warranty or undertaking of whatever nature in respect of the Data. The Contractor acknowledges and confirms that:</p> <ol style="list-style-type: none"> 1) it was cautioned during the tender process that preceded this Contract that the interpretation and use of the Data is at the Contractor's own risk; 2) it has conducted its own analysis and review of the Data and has, before the execution and delivery of this Contract, satisfied itself as to the accuracy, completeness and fitness for

FIDIC Gold Book Special Conditions Provision	Item	Amendment
		<p>purpose of any such Data upon which it places reliance; and</p> <p>3) it shall not be entitled to and shall not make any claim against the Employer (whether in contract, tort or otherwise), including, without limitation, any claim in damages, for extensions of time or for additional payments under this Contract on the grounds:</p> <p>A) of any misunderstanding or misapprehension in respect of the Data; or</p> <p>B) that the Data was incorrect or insufficient, nor shall the Contractor be relieved from any of its obligations under this Contract on any such ground.</p>
4.12	Unforeseeable Physical Conditions	<p>Delete the wording of the Sub-Clause and replace with the following:</p> <p>In this Sub-Clause, "physical conditions" means natural physical conditions and man-made and other physical obstructions and pollutants, which the Contractor encounters at the Site when executing the Works, including sub- surface and hydrological conditions but excluding climatic conditions.</p> <p>If the Contractor encounters adverse physical conditions which he considers to have been Unforeseeable, the Contractor shall give Notice to the Employer's Representative as soon as practicable.</p> <p>This Notice shall describe the physical conditions, so that they can be inspected by the Employer's Representative, and shall set out the reasons why the Contractor considers them to be Unforeseeable. The Contractor shall continue executing the Works, using such proper and reasonable measures as are appropriate for the physical conditions, and shall comply with any instructions which the Employer's Representative may give. If an instruction constitutes a Variation, Clause 13 [Variations and Adjustments] shall apply.</p> <p>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:</p>

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		<p>(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].</p> <p>The Contractor shall not be entitled to payment of any additional Cost associated with unforeseeable physical conditions encountered.</p> <p>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 matter described in subparagraph (a) above.</p> <p>The Employer's Representative may take account of any evidence of the physical conditions foreseen by the Contractor when submitting the Tender, which may be made available by the Contractor, but shall not be bound by any such evidence.</p>
4.14	Avoidance of Interference	<p>Add the following after point (b):</p> <p>(c) The Contractor shall avoid interference with construction activity adjacent to the site.</p>
4.18	Protection of the Environment	<p>Add the following at the end of this Sub-Clause:</p> <p>The Contractor shall conform to the Employer's Requirements and shall indemnify the Employer against any liability or damages or claims arising out of his operations. The Contractor shall be responsible and liable for any stoppage, closure or suspension of the Works due to any contravention of statutory requirements relating to the protection of the environment and shall indemnify and keep indemnified the Employer in this regard.</p>
4.25	Changes in the Contractor's Financial Situation	<p>Add the following at the end of this Sub-Clause:</p> <p>If the Contractor constitutes (under applicable Laws) a joint venture, consortium or other grouping of two or more persons, then for the purposes of this Sub-Clause 4.25, the term "Contractor" shall apply to each participant in the joint venture, consortium or other grouping of two or more persons.</p> <p>If the Contractor is a special purpose vehicle, then for the purposes of this Sub-Clause 4.25, the term</p>

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		<p>“Contractor” shall apply to each entity with an ownership interest in the Contractor, including any entity that undertook to provide a Parent Company Guarantee in the prequalification or tender processes that preceded this Contract.</p>
4.26 - NEW	Parent Company Guarantee	<p>Add New Sub-Clause: 4.26 Parent Company Guarantee</p> <p>If the Contractor has been required to provide a Parent Company Guarantee or Parent Company Guarantees in the prequalification or tender processes that preceded this Contract, the Contractor shall at his cost, maintain that Parent Company Guarantee or Parent Company Guarantees for the duration of the Contract.</p>
4.27 - NEW	Collateral Warranties	<p>Add New Sub-Clause: 4.27 Collateral Warranties during Design-Build and Operation & Maintenance Period,</p> <p>The Contractor shall ensure that, he furnished to the Employer Collateral Warranty valid till issue of completion certificate from each of his:</p> <ul style="list-style-type: none"> a) designer (for the purposes of the Clause referred to as ‘Consultants’); b) Subcontractors; c) Designer including Subcontractors (for the purposes of this Clause referred to as ‘Additional Consultants’), d) Technology Provider e) vendors, equipment manufacturers, equipment suppliers, equipment dealers (for the purposes of this Clause referred to as ‘Vendor’) <p>Collateral Warranty shall be as per the form included in Volume 4 of the Contract.</p> <p>The Contractor shall furnish to the Employer such Collateral Warranty no later than 14 days after the date of engagement/placement of purchase order of the Consultant, Subcontractor or Additional Consultant, vendor, technology provider together with evidence that the professional indemnity insurances referred to in the Collateral Warranties have been effected by each of the designers/vendors for an amount of cover to be not less than the amount stated in the Contract Data under 19.2 c).</p>

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4.28 - NEW	Collateral Warranties	DELETED
4.29 - NEW	Member Shareholding	<p>Add New Sub-Clause:4.29 Member Shareholding</p> <p>4.29 Member Shareholding</p> <p>If the Contractor constitutes (under applicable Laws) a joint venture, special purpose vehicle, or consortium up to three members, then the following shareholding rules shall apply:</p> <ul style="list-style-type: none"> i) the shareholding of all original members shall be maintained throughout the contract period. ii) the lead member shall maintain a shareholding of at least 51% for the entire Contract Period; and the other members shall have a share not less than 20 % each
5.2	Contractor's Documents	<p>Delete the wording of the Sub-Clause and replace with the following:</p> <p>The Contractor's Documents shall comprise the technical documents specified in the Employer's Requirements, documents required to satisfy all permits, licences and approvals, and the documents described in Sub-Clause 5.5 [As-Built Documents] and Sub-Clause 5.6 [Operation and Maintenance Manuals]. Unless otherwise stated in the Employer's Requirements, the Contractor's Documents shall be written in the language for communications defined in Sub-Clause 1.4 [Law and Language].</p> <p>The Contractor shall prepare all Contractor's Documents, and shall also prepare any other documents necessary to instruct the Contractor's Personnel. The Contractor shall prepare Contractor's Documents in sufficient detail to satisfy all requirements for permits, licences and approvals, to provide suppliers and construction personnel sufficient instruction to execute the Design-Build of the Works, and to describe the operation and maintenance of the completed Works. The Employer's Representative shall have the right to inspect the preparation of all these documents, wherever they are being prepared.</p> <p>Each of the Contractor's Documents shall, when</p>

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		<p>considered ready for use, be submitted to the Employer's Representative for review in accordance with the Employer's Requirements. In this Sub-Clause "review period" means the period for review established by the Employer's Representative, acting reasonably, at the time of submission of the applicable Contractor's document taking account of the type, complexity and extent of Contractor's Document to be reviewed. The review period shall be 28 days unless otherwise stated in the Employer's Requirements or otherwise agreed by the Employer's Representative and the Contractor. The review period shall be calculated from the date on which the Employer's Representative receives a Contractor's Document and the Contractor's Notice that it is considered ready, both for review in accordance with this Sub-Clause and for use.</p> <p>If the Employer's Representative, within the review period established for a Contractor's Document, notifies the Contractor that such Contractor's Document fails (to the extent stated) to comply with the Employer's Requirements, the Contractor's Document shall be rectified, resubmitted and re-reviewed (with a new review period as established by the Employer's Representative, acting reasonably), at the Contractor's cost.</p> <p>Except to the extent that the prior consent or approval of the Employer's Representative has been obtained;</p> <p>a) neither implementation of the Contractor's Document nor execution of such part of the Works to which the Contractor's Document applies shall commence until the Employer's Representative has either approved or given his consent to the Contractor's Document;</p> <p>b) Work shall be executed in accordance with applicable Contractor's Documents; and</p> <p>c) if the Contractor wishes to modify any Contractor's Document which has previously been submitted for review, the Contractor shall immediately notify the Employer's Representative, and shall subsequently submit a revised Contractor's Document, and a written explanation of the need for the modification, to</p>

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		<p>the Employer's Representative for review in accordance with Sub-Clause 5.2.</p> <p>If the Employer's Representative, acting reasonably, considers that additional Contractor's Documents are necessary for the execution of the Design-Build of the Works, the Contractor shall, upon receiving the Employer's Representative's request, prepare such Contractor's Documents at the Contractor's cost.</p> <p>Errors, omissions, ambiguities, inconsistencies, inadequacies and other defects shall be rectified by the Contractor at his own cost.</p> <p>Any consent and/or approval (under this Sub-Clause or otherwise) shall not relieve the Contractor from any obligation or responsibility in accordance with this Contract.</p> <p>The Contractor shall not be entitled to an extension of the Time for Completion of Design-Build for delays incurred in preparing, correcting or completing Contractor's Documents.</p>
6.4	Labour Laws	<p>Add the following at the end of this Sub-Clause:</p> <p>During continuance of the Contract, the Contractor and his Subcontractors shall abide at all times by all existing labour enactments and rules made thereunder, regulations, notifications and bye laws of State or Central Government or local authority and any other labour law (including rules), regulations, bye laws that may be passed or notification that may be issued under any labour law in future either by the State or the Central Government or the local authority. Salient features of some of the major labour laws that are applicable to the construction industry are given below. The Contractor shall keep the Employer indemnified in case any action is taken against the Employer by the competent authority on account of contravention of any of the provisions of any Act or rules made thereunder, regulations or notifications including amendments, if any, on the part of the Contractor, the Employer's Representative or the Employer shall also have right to recover from the Contractor any sum required or estimated to be required for making good the loss or damage suffered by the Employer.</p> <p>The employees of the contractor and the sub-</p>

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		contractor in no case shall be treated as the employees of the Employer at any point of time.
		<p>SALIENT FEATURES OF SOME MAJOR LABOUR LAWS APPLICABLE TO ESTABLISHMENTS ENGAGED IN BUILDING AND OTHER CONSTRUCTION WORK.</p> <p>i) <u>Workmen Compensation Act 1923</u></p> <p>The Act provides for compensation in case of injury by accident arising out and during the course of employment.</p> <p>ii) <u>Payment of Gratuity Act 1972</u></p> <p>Gratuity is payable to an employee under the Act on satisfaction of certain conditions on separation if an employee has completed 5 years of service or more or on death at the rate of 15 days wages for each completed year of services. The Act is applicable to all establishments employing 10 or more employees.</p> <p>iii) <u>Employees PF and Miscellaneous Provision Act 1952</u></p> <p>The Act provides for monthly contribution by the employer plus workers @ 10% or 8.33%. The benefits payable under the Act are:</p> <p>a) Pensions or family pension on retirement or death as the case may be.</p> <p>b) Deposit linked insurance on the death in harness of the worker.</p> <p>c) Payment of PF accumulation on retirement/death etc.</p> <p>The contractor should have the registration certificate of EPF and MP act 1952 and ESIC Act 1948. This is as per circular dated 3.2.2012 of Chief Labour Officer.</p> <p>iv) <u>Maternity Benefit Act 1951</u></p> <p>The Act provides for leave and some other benefits to women employees in case of confinement or miscarriage etc.</p>
		<p>v) <u>Contract Labour (Regulation and Abolition) Act 1970</u></p> <p>The Act provides for certain welfare measures to be provided by the contractor to contract</p>

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		<p>labour and in case the contractor fails to provide, the same are required to be provided by the Principal Employer by Law. The Principal Employer is required to take Certificate of Registration and the contractor is required to take a License from the designated officer. The Act is applicable to the establishments or contractor of Principal Employer if they employ 20 or more contract labour.</p> <p>vi) <u>Minimum Wages Act 1948</u></p> <p>The employer is supposed to pay not less than the Minimum Wages fixed by appropriate Government as per provisions of the Act if the employment is a scheduled employment. Construction of Buildings, Roads, and Runways are scheduled employments.</p> <p>vii) <u>Payment of Wages Act 1936</u></p> <p>This Act lays down by what date the wages are to be paid, when they will be paid and what deductions can be made from the wages of the workers.</p> <p>viii) <u>Equal Remuneration Act 1979</u></p> <p>The Act provides for payment of equal wages for work of equal nature to male and female workers and for not discrimination against female employees in the matters of transfers, training and promotions etc.</p> <p>ix) <u>Payment of Bonus Act 1965</u></p> <p>The Act is applicable to all establishments employing 20 or more workmen. The Act provides for payments of annual bonus subject to a minimum of 8.33% of wages and maximum of 20% of wages to employees drawing Rs. 3,500/- P.M. or less. The bonus to be paid to employees getting Rs. 2,500/- P.M. or above up to Rs. 3,500/- P.M. shall be worked out by taking wages as Rs. 2,500/- p.m. only. The Act does not apply to certain establishments. The newly set up establishments are exempted for five years in certain circumstances. Some of the State Governments have reduced the employment size from 20 to 10 for the purpose of applicability of the Act.</p>

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		<p>x) <u>Industrial Disputes Act 1947</u></p> <p>The Act lays down the machinery and procedure for resolution of industrial disputes, in what situations a strike or lock-out becomes illegal and what are the requirements for laying off or retrenching the employees or closing down the establishment.</p> <p>xi) <u>Industrial Employment (Standing Orders) Act 1946</u></p> <p>This Act is applicable to all establishments employing 100 or more workmen (employment size reduced by some of the States and Central Government to 50). The Act provides for the laying down rules governing the conditions of employment by the certified by the designated Authority.</p> <p>xii) <u>Trade Unions Act 1926</u></p> <p>The Act lays down the procedure for registration of trade unions of workmen and employers. The trade unions registered under the Act have been given certain immunities from civil and criminal liabilities.</p> <p>xiii) <u>Child Labour (Prohibition and Regulation) Act 1986</u></p> <p>The Act prohibits employment of children below 14 years of age in certain occupations and processes and provides for regulation of employment of children in all other occupations and processes. Employment of child labour is prohibited in Building and Construction industry.</p> <p>xiv) <u>Inter-State Migrant Work men's (Regulation of Employment and Conditions of Service) Act 1979</u></p> <p>The Act is applicable to an establishment which employees 5 or more inter- state migrant workmen through an intermediary (who has recruited workmen in one state for employment in the establishment situated in another state). The inter-state migrant workmen, in an establishment to which this Act becomes applicable, are required to be provided certain facilities such as housing, medical aid, travelling expenses from home up to the establishment and bank etc.</p>

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		<p>xv) <u>The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act 1996 and the Cess Act of 1996.</u></p> <p>All the establishments who carry on any building or other construction work and employs 10 or more workers are covered under this Act. All such establishments are required to pay cess at 1% of the cost of construction as may be notified by the Government. The employer of the establishment is required to provide safety measures at the Building or Construction work and other welfare measures, such as Canteen, First- aid facilities, Ambulance, Housing accommodations for Workers near the workplace etc. The employer to whom the Act applies has to obtain a registration certificate from the Registering Officer appointed by the Government.</p> <p>xvi) <u>The Factories Act 1948</u></p> <p>The Act lays down the procedure for approval of plans before setting up a factory, health and safety provisions, welfare provisions, working hours, annual earned leave and rendering information regarding accident or dangerous occurrences to designated authorities. It is applicable to premises employing 10 persons or more with aid of power or 20 or more persons without the aid of power engaged in manufacturing process.</p>
6.7	Health and Safety	<p>Add the following at the end of this Sub-Clause:</p> <p>Without limiting the generality of Sub-Clause 1.14, the Contractor shall comply at all times during the Contract Period with all relevant health and safety Laws.</p> <p>For greater clarity:</p> <p>a) the Contract Price shall include all costs which may be incurred by the Contractor in complying with this Sub- Clause 6.7; and</p> <p>b) the Contractor acknowledges and agrees that the Time for Completion of Design-Build is adequate for the safe construction of the Works in accordance with this Sub-Clause 6.7.</p>

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6.12 –NEW	Employment of Local Personnel	<p>Add New Sub-Clause:</p> <p>The Contractor is encouraged, to the extent practicable and reasonable, to employ staff and labour with appropriate qualifications and experience from source within India.</p>
7.7	Ownership of Plant and Materials	<p>Add the following at the end of this Sub-Clause:</p> <p>To the extent that the Contractor has received the benefit of any warranties from any Subcontractor or vendor or supplier of any Plant or Materials the Contractor shall assign the benefit of all such warranties to the Employer to the extent that the Contractor is legally able to do so, especially in the event that such warranty extends beyond the Contract Period.</p> <p>The Contractor shall procure and maintain in full force and effect, as necessary, appropriate proprietary rights, intellectual property rights, licenses, agreements and permissions for plant, materials, methods, processes, controls and systems used in or incorporated into the Contract.</p> <p>In case the Contractor proposes advance / patented technology, tie-up agreement should be submitted along with their bid that the concerned technology provided has to guarantee technology backup to Employer (MCGM).</p>
7.9 – NEW	Origin of Goods	<p>Add New Sub-Clause:</p> <p>The Goods and services to be supplied under the Contract may have their origin in any country subject to the restrictions specified in this Sub-Clause 7.9.</p> <p>Suppliers from a country or Goods manufactured in a country may be excluded if:</p> <ol style="list-style-type: none"> a) as a matter of Law or official regulation, the Employer's Country prohibits commercial relations with that country, provided that such exclusion does not preclude effective competition for the supply of the goods or works required; or b) by an Act of Compliance with a Decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, the Employer's Country prohibits any import of Goods from that country or any payments to persons or entities in that country.

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		<p>All procurement of Goods and services under the Contract shall not contravene such restrictions. At the Employer's request, the Contractor shall provide evidence of the origin of Goods and services.</p> <p>The Contractor is encouraged to use to the extent practicable and reasonable equipment, plant, materials and supplies from source within the country of the Employer.</p>
8.3	Programme	<p>Delete sub-clause (a) and replace with: (a) the order in which the Contractor intends to carry out the Works, including the anticipated timing of each milestone. All the line items in the Price Schedule shall be indicated as milestones as a minimum. The Contractor may further subdivide the items to stage of Design, Contractor's Documents, Procurement, manufacture, inspection, delivery to Site, construction, erection, testing, commissioning and trial operation;</p> <p>Add the following at the end of the Clause: The Employer shall review the progress of works every six months and if failure to achieve the financial progress as per the approved programme is noticed, the delay damages shall be made applicable as per the provisions of Clause 9.6.</p>
9.3	Extension of Time for Completion of Design-Build	<p>In sub-paragraph (d) of Sub-Clause 9.3, delete the expression, "government actions" and replace with "a change in Law".</p> <p>Add the following at the end of the Clause: No idling charges shall be paid to the Contractor for any period of delay, irrespective of the reason, whether it is eligible for an extension of time under the Contract or not.</p>

9.6	Delay Damages relating to Design-Build	<p>Add the following at the end of this Sub-Clause:</p> <p>Following the submission of the programme in accordance with Sub-clause 8.3, the Employer's Representative shall determine intermediate milestones. The penalty for failing to meet the milestone shall be INR 50,000 per day of delay. If the Contractor complies with Sub-Clause 9.2 [Time for Completion of Design-Build] the penalty shall be repaid. If the Contractor fails to comply with Sub-Clause 9.2 [Time for Completion of Design-Build] penalties paid for failing to meet intermediate milestones will be credited against delay damages payable to the Employer for this default.</p>
9.8	Consequences of Suspension	<p>Delete the wording of the sub-clause and replace with the following:</p> <p>If during the Design-Build period, the contractor suffers delay and / or incurs cost from complying with the A Employer's Representatives instructions under sub-clause 9.7 [Suspension of Works] and / or from resuming the work, the Contractor shall give Notice to the Employer's Representative and shall be entitled, subject to sub-clause 20.1 (Contractors' Claims), to an extension of time for any such delay, if completion is or will be delayed, under sub-clause 9.3 [Extension of Time] for completions of Design-Build);</p> <p>After receiving this Notice, the Employer's Representative shall proceed in accordance with sub-clause 3.5 [Determinations] to agree or determine these matters.</p> <p>The Contractor shall not be entitled to an extension of time for making good the consequences of the Contractor's faulty design, workmanship or materials, or of the Contractor's failure to protect, store or secure in accordance with sub-clause 9.7 [Suspension of Works].</p> <p>The Contractor shall not be entitled to payment of any additional Cost associated with the suspension of the work or consequences.</p>
10.3	Independent Compliance Audit	Delete this Sub-Clause in its entirety.

10.4	Delivery of Raw Materials	Delete the wording of the Sub-Clause and replace with the following: Unless explicitly stated otherwise in the Employer's Requirements, the Contractor shall be responsible for the provision of all raw materials, fuels, consumables and other such items required for the design, construction, and operation of the Works. 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.
10.7	Amount of Performance Damages	Add New Sub-Clause: (c) The Employer and Contractor agree that such performance damages represent a genuine pre-estimate of reasonable compensation for

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		<p>the loss and damage that will be suffered by the Employer in the event of failure on the part of the Contractor, that it would be difficult or impossible to quantify such damages upon the happening of such event, and that the Contractor shall not contend the reasonableness of the amount of performance damages payable pursuant to this Sub-Clause 10.7.</p>
10.10 - NEW	Step In Rights	<p>Add New Sub-Clause: 10.10 Step In Rights</p> <p>The Employer may enter on to the Site and take over the responsibility for the Operation Service or part thereof if:</p> <ul style="list-style-type: none"> a) the Contractor has failed to remedy any defect or damage which has resulted in the Operation Service or part thereof not complying with the performance requirements of this Contract within a time period set by the Employer or Employer's Representative under Sub-Clauses 15.1 or 12.4 of the Conditions of Contract; or b) the Employer considers that it must take over responsibility for the Operation Service or part thereof to prevent a serious threat to health, safety or the environment; or c) The Employer considers that maintenance of the Works is not being carried out in accordance with the Contract. d) If the Employer takes over responsibility for the Operation Service or part thereof, the following shall apply: <ul style="list-style-type: none"> i) All payment to the Contractor in respect of the Operation Service or part thereof for which the Employer has stepped in shall be suspended, and except as otherwise set out in this Sub-Clause 10.10, no payment shall be owing to the Contractor in respect of the Operation Service or part thereof performed by the Employer. ii) The Employer shall have the right to use such Contractor Personnel as is necessary to carry out the Operation Service, or part thereof, and shall reimburse the Contractor for only the hourly wages, benefits and overhead applicable to those Contractor

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		<p>Personnel used to carry out the Operation Service, or part thereof, in accordance with this Sub-Clause;</p> <p>iii) All additional costs and expenses properly incurred by the Employer in taking over all or part of the Operation Service in this event shall be recoverable from the Contractor by the Employer except where such action does not arise from any breach of the Contractor's obligations under this Contract when the Contractor will be entitled to fair and reasonable compensation for any costs incurred as a result of such action.</p> <p>iv) If the Employer has taken over responsibility for the Operation Service, or part thereof, in accordance with Sub-Clause 10.10 (b) (ii) the Contractor shall not be responsible for the applicable Operation Service until the Employer has given an instruction for the Contractor to re-commence the Operation Service, or part thereof, that the Employer had taken over responsibility for; and</p> <p>v) If the Employer has not given an instruction to the Contractor to re-commence the Operation Service, or part thereof, within 84 days after the date of the Employer's takeover, the Contractor may, by Notice to the Employer's Representative, require permission to re-commence within 28 days after the Contractor's Notice. If the Employer does not grant permission to re-commence prior to the expiration of the 28 days, the Contractor may treat the taking over as an omission under Clause 13.3 of the Conditions of Contract of the affected part of the Operation Service or if such taking over is for the whole of the Operation Service the Contractor may terminate the Contract under Sub-Clause 16.2 of the Conditions of Contract.</p>
10.12 - NEW	Subsequent Operator	<p>Add a new Sub-Clause 10.12:</p> <p>10.12 Subsequent Operator</p> <p>The Contractor acknowledges and agrees that the Employer may, in its sole discretion and on the</p>

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		<p>termination or expiration of this Contract retain a new operator (the "Subsequent Operator" to carry out services the same as or similar to the Operation Service and that the process (competitive or otherwise) to identify the Subsequent Operator may commence, in the Employer's sole discretion, immediately prior to the termination or expiration of this Contract.</p> <p>The Contractor shall cooperate fully with the Employer's efforts to retain a Subsequent Operator and such cooperation shall include:</p> <ul style="list-style-type: none"> a) The provision of detailed operations data which is to be provided to the Subsequent Operator or to prospective Subsequent Operators (including for the purposes of conducting a competitive procurement process to select a new Subsequent Operator); and b) The provision of access to the Works prior to the termination or expiration of the Contract for prospective Subsequent Operators.
13.3	Variation Procedure	<p>Add the following at the end of this Sub-Clause:</p> <p>For the purposes of determining adjustments to the Contract Price, the Contractor shall provide all Contract Price constitution information requested by the Employer's Representative, which the Employer's Representative determines, in his sole discretion, is necessary to make a determination in respect of a proposed adjustment to the Contract Price.</p> <p>The Contractor shall not be entitled to seek payment and/or compensation for the carrying out of a Variation and/or for any delay or disruption arising from or in connection with a Variation unless the Contractor gives Notice to the Employer's Representative:</p> <ul style="list-style-type: none"> a) no later than 14 days after issuance by the Employer's Representative of the instruction to carry out the Variation, of the Contractor's intention to make a claim for an increase in the Contract Price accompanied by full details of the Contractor's estimate of the costs which will be incurred arising from or in connection with carrying out of the Variation; and b) no later than 30 days after the completion of the varied work, of the work undertaken by the Contractor and of the delay and disruption (if

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		<p>any) caused by the Variation and of the adjustment sought to the Contract Price.</p> <p>If any Variation proposed by the Employer or the Employer's Representative results in an omission in respect of the Works, or any part thereof, then the Contract Price shall be reduced by the amount agreed by the parties in accordance with the procedures set out in the first sub- paragraph of Sub-Clause 13.3 (a) to (c) inclusive or, in the case of a Variation ordered where agreement has not been reached as to the value of the omission, at the rates and prices in the Schedule of Payments, or, if no appropriate rate is agreed, at rates based on a fair evaluation. Any reduction in the Contract Price arising from the omission shall be certified by the Employer's Representative and in such circumstances, the Contract Price shall be reduced accordingly.</p>
13.9	Upgrades, Alterations, and Improvements	<p>Add New Sub-Clause:</p> <p>13.9 Upgrades, Alterations, and Improvements</p> <p>a) If:</p> <ul style="list-style-type: none"> i) an increase in flow or load above design capacity or change in level of treatment provided is requested by the Employer; or ii) changes in relevant applicable Laws, necessitates a modification, upgrade, alteration, improvement and/or expansion of the Works during the Operation Service Period, either party shall be entitled to give written Notice of this to the other stating the reason for the required modification, upgrade, alteration, improvement and/or expansion of the Works. <p>b) The Contractor shall, no later than 28 days after giving or receiving (from the Employer's Representative) a Notice in accordance with Sub-Clause 13.9 (a), submit to the Employer's Representative a written proposal for the proposed modification, upgrade, alteration, improvement and/or expansion of the Works. The Contractor's written proposal shall include;</p> <ul style="list-style-type: none"> i) a fully substantiated cost estimate; ii) details of the impact on payments for the Operation Service; iii) a programme for the implementation of the

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		<p>proposal and details of the impact on the Operation Service; and</p> <p>iv) details of any alterations to the Operation Service Programme.</p> <p>c) The Contractor shall be entitled to recover from the Employer all reasonable costs and expenses incurred by the Contractor in preparing and furnishing the proposal. If requested by the Employer's Representative, the Contractor shall provide an estimate of all costs and expenses which would be incurred in preparing and furnishing the proposal.</p> <p>d) The Employer shall instruct the Contractor, within a reasonable time of receipt of the proposal:</p> <p>i) to enter into discussions with the Employer's Representative on the programme, technical or financial aspects of the proposal, which may include the apportionment of Costs; or</p> <p>ii) to carry out the modification, upgrade, alteration, improvement and/or expansion of the Works, as proposed; or</p> <p>iii) to carry out the modification, upgrade, alteration, improvement and/or expansion of the Works in accordance with modifications to the Contractor's proposal as agreed between the parties; or</p> <p>iv) to withdraw the proposal.</p> <p>e) The Employer's Representative may also instruct the Contractor,</p> <p>i) to prepare tender documents necessary to implement the modification, upgrade, alteration, improvement and/or expansion of the Works; or</p> <p>ii) to review draft design and tender documents produced by others for the implementation of the modification, upgrade, alteration, improvement and/or expansion of the Works.</p> <p>f) The Contractor may refuse to execute the modification, upgrade, alteration, improvement and/or expansion of the Works only where such execution would breach a duty imposed</p>

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		<p>by any applicable health and safety legislation, or which would require the Contractor to infringe any patent, registered design, design right, copyright or other protected right of any third party, or which would require the Contractor to exercise skills other than those which the Contractor undertakes in the ordinary course of his business.</p> <p>g) The Contractor shall give Notice to the Employer in writing of such refusal no later than 14 days after the receipt from the Employer of a request for proposals in respect of any proposed modification, upgrade, alteration, improvement and/or expansion of the Works. Upon receipt of a refusal the Employer's Representative may withdraw the instruction or, if he does not accept the validity of the Contractor's objection, the matter shall be referred to the Operation Service Monitoring Group.</p> <p>h) The Employer shall be entitled to seek tenders from third parties in respect of any proposed modification, upgrade, alteration, improvement and/or expansion of the Works during the Operation Service Period, whether proposed by the Employer or the Contractor and shall be further entitled to enter into separate contracts with other parties for such expansion or modification.</p> <p>i) Unless the amount to be paid to the Contractor under this Sub-Clause, if any, is agreed between the Contractor and the Employer, the Employer's Representative shall determine the amount in accordance with Sub-Clause 3.5.</p> <p>j) If the modification, upgrade, alteration, improvement and/or expansion of the Works are to be based on designs developed by third parties, the Employer shall provide the Contractor with the opportunity to review such designs and propose amendments. The Employer shall make reasonable efforts to ensure that the Contractor's comments are taken into account when the designs and tender documents are being finalized.</p> <p>k) The Contractor shall co-operate with any third party engaged by the Employer to implement any modification, upgrade, alteration,</p>

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		<p>improvement and/or expansion of the Works during the Operation Service Period.</p> <p>l) Any Dispute that arises under this Sub-Clause shall be referred to the Operation Service Monitoring Group.</p>
14.2	Advance Payment	<p>Delete the Clause 14.2 of General Conditions (FIDIC) and replace by following</p> <p>After satisfactory compliance to the provisions of clause nos. 49 and 51 of ITT, An Advance Payment will be paid to the Contractor against submission of Bank Guarantee valid till recovery of the advanced amount.</p> <p>If provision of the Advance Payment Guarantee requires the payment of any, tax or stamp duty then such payment shall be at the expense of the Contractor.</p> <p>The Employer's Representative shall issue an Interim Payment Certificate for the advance payment under Sub-Clause 14.7 [<i>Issue of Advance and Interim Payment Certificates</i>] after receiving an application under Sub-Clause 14.3 [<i>Application for Advance and Interim Payment Certificates</i>] and after the Employer receives (i) the Performance Security in accordance with Sub-Clause 4.2 [<i>Performance Security</i>] and</p> <p>(ii) a guarantee in amounts and currencies equal to the advance payment. This guarantee shall be issued by an entity and from within a country (or other jurisdiction) approved by the Employer, and shall be based on the sample form included in the tender documents or in another form approved by the Employer.</p> <p>The Contractor shall ensure that the guarantee is valid and enforceable until the advance payment has been repaid. If the terms of the guarantee specify its expiry date, and the advance payment has not been repaid by the date 28 days prior to the expiry date, the Contractor shall extend the validity of the guarantee until the advance payment has been repaid.</p> <p>The advance payment shall be repaid through percentage deductions in Interim Payment Certificates. Unless other percentages are stated</p>

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		<p>in the Contract Data:</p> <p>(a) deductions shall commence in the Interim Payment Certificate in which the total of all certified interim payments (excluding the advance payment and deductions and repayments of retention) exceeds ten percent (10%) of the Accepted Contract Amount for the Design-Build less Provisional Sums; and</p> <p>(b) deductions shall be made at the amortisation rate of one-quarter (25%) of the amount of each Interim Payment Certificate (excluding the advance payment and deductions and repayments of retention) issued during the Design-Build Period.</p> <p>If the advance payment has not been repaid prior to the issue of the Commissioning Certificate or prior to termination under Clause 15 [Termination by Employer], Clause 16 [Suspension and Termination by Contractor] or Clause 18 [Exceptional Risks] (as the case may be), the whole of the balance then outstanding shall immediately become due and payable by the Contractor to the Employer.”</p>
14.3	Application for Advance and Interim Payment Certificates	<p>Add the following at the end of this Sub-Clause:</p> <p>Not later than 90 days after the issue of the Commissioning Certificate the Contractor shall submit to the Employer’s Representative a Statement following Commissioning with supporting documents showing in detail, in the form approved by the Employer’s Representative :</p> <p>a) the final value of all work done in accordance with the Contract up to the date stated in such Commissioning Certificate;</p> <p>b) any further sums which the Contractor considers to be due; and</p> <p>c) an estimate of amounts which the Contractor considers will become due to him under the Contract.</p> <p>Estimated amounts shall be shown separately in such Statement. The Employer’s Representative shall certify payment in accordance with Sub-Clause 14.7.</p>
14.6	Payment for Plant and	Delete the second paragraph which begins “If the lists referred to in sub-paragraphs (b)(i) or (c)(i)

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	Materials intended for the Works	below are not included in the Contract Data, this Sub-Clause shall not apply.” Delete sub-paragraph (b) of this Sub-Clause.
14.8	Payment	Delete the wording of the Sub-Clause and replace with the following: The Employer shall pay to the Contractor: a) the advance payment within 21 days after receiving the documents in accordance with Sub-Clause 4.2 [Performance Security] and Sub-Clause 14.2 [Advance Payment] and the Payment Certificate for the advance payment issued in accordance with Sub-Clause 14.7 [Issue of Advance and Interim Payment Certificates]; b) the amount certified in each Interim Payment Certificate, excluding amounts for adjustments and variations, within 30 days after the Employer’s Representative receives the corresponding Statement and supporting documents; c) the amount certified for adjustments in each Interim Payment Certificate, within 40 days after the Employer’s Representative receives the corresponding Statement and supporting documents including any amounts due in accordance with a decision by the DAB which have been included in the Interim Payment Certificate; and d) the amounts certified in the Final Payment Certificate Design-Build and the Final Payment Certificate Operation Service within 60 days after the Employer receives each such Final Payment Certificate, including any amounts due in accordance with a decision by the DAB which have been included in the Final Payment Certificate e) Interim certificate for reimbursement of taxes and duties shall be made within 30 days after the Employer’s Representative receives the corresponding Statement and supporting documents. Payment of the amount due shall be made as per terms of payment specified under in INR through ECS system directly into the bank account, nominated by the Contractor.

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14.9	Delayed Payment	Delete the wording of the Sub-Clause and replace with the following: MCGM shall make all efforts to release the payments within 30 days of the approval and certification of the invoice submitted by the contractor. However, no interest, whatsoever, shall be payable in case the payment is delayed beyond 30 days
14.16	Cessation of Employer's Liability	Add the following at the end of the first paragraph: In addition, the Employer shall not be liable to the Contractor for any matter or thing arising out of or in connection with the Contract which occurred prior to the date stated in the Commissioning Certificate unless the Contractor shall have included a claim in respect thereof in his Statement following Commissioning referred to in Sub-Clause 14.3.

14.18	Asset Replacement Fund	<p>The Asset Replacement Expenditure is to meet the necessary expenses for the replacement of items of Plant identified in the Asset Replacement Schedule as required for the continued efficient operation of the Works for the duration of the Operation Service Period.</p> <p>In each application for an Interim Payment Certificate during the Operation Service Period made in accordance with Sub-Clause 14.3 [Application for Advance and Interim Payment Certificates], the Contractor shall be entitled to claim amount due according to the Asset Replacement Schedule, following the replacement of the scheduled items by the Contractor. Under no circumstances will the amount payable be increased from the amount due according to the Asset Replacement Schedule, irrespective of the value or amount of replacements which have been made. For any items which have not been replaced by the date or other operational milestone identified in the Asset Replacement Schedule, payment will not be released.</p> <p>The Asset Replacement Schedule shall not cover the cost of:</p> <ol style="list-style-type: none"> a) Items, spare parts associated/required during routine maintenance, for correction of defects; b) replacement of Plant and Material which have a life expectancy of less than that specified in Table 9.1 Design Life of volume 2; c) providing spares between scheduled dates for major plant replacement; or d) the replacement of Plant and Materials which are not identified in the Asset Replacement
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		<p>Schedule.</p> <p>The cost of meeting the requirements of sub-paragraphs (a) to (d) above shall be borne by the Contractor and be deemed to be included in the Contract Price.</p>
14.19	Maintenance Retention Fund	Delete the wording of the Sub-Clause.
15.8 - NEW	Cessation of Work and Removal of Contractor's Equipment	<p>Add New Sub-Clause:</p> <p>15.8 Cessation of Work and Removal of Contractor's Equipment</p> <p>After a Notice of termination under Sub-Clause 15.2 [Termination for Contractor's Default] or Sub-Clause 18.5 [Optional Termination, Payment and Release] has taken effect, the Contractor shall, unless the Employer cured the event or circumstance within the 14-days' Notice period, promptly:</p> <p>a) cease all further work, except for such work as may have been instructed by the Employer's Representative for the protection of life or property or for the safety of the Works or protection of the environment. For all such instructed work, the Contractor shall be entitled to be paid Cost Plus Profit and shall be relieved of further liabilities under Sub-Clauses 4.8 [Safety Procedure]s and 4.18 [Protection of the Environment];</p> <p>b) hand over to the Employer the Contractor's Documents, Plant, Materials and other work, for which the Contractor has received payment; and</p> <p>c) remove all other Goods from the Site, except as necessary for safety, and leave the Site.</p>
16.2	Termination by Contractor	Delete bullet points (b) and (c) in this sub-clause.
16.4	Payment on Termination	Replace sub-paragraph (b) of this Sub-Clause with: (b) pay the Contractor in accordance with Sub-Clause 18.5 [Optional Termination, Payment and Release]
16.4	Payment on Termination	Delete sub-paragraph (c) of this Sub-Clause.

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17.9	Indemnities by the Contractor	Add the following at the end of this Sub-Clause: The Contractor shall at all times take commercially reasonable steps to minimize and mitigate any loss for which the relevant party is entitled to bring a claim against the other Party pursuant to this Clause 17.
17.10	Indemnities by the Employer	Add the following at the end of this Sub-Clause: The Employer shall at all times take commercially reasonable steps to minimize and mitigate any loss for which the relevant party is entitled to bring a claim against the other Party pursuant to this Clause 17. If the Contractor is non-resident in India, any claims under the indemnity by the Employer to the Contractor pursuant to this Clause 17 shall be subject to the approval of the Reserve Bank of India under the Foreign Exchange Management Act, 1999.
19.1	Insurance	Add the following at the end of this Sub-Clause: All insurances for the Works shall be taken from the Directorate of Insurance Maharashtra State and in the event that insurance cover is not offered by the Directorate of Insurance, the same can be taken out from an insurance company approved by the Maharashtra State Insurance Fund.
20.7	Amicable Settlement	Delete the Clause and replace by the following- As far as possible the Parties shall use their best efforts to settle amicably all disputes arising out of or in connection with this Contract or the interpretation thereof. Any dispute between the parties as to matters arising pursuant to this contract which cannot be settled amicably will be decided by the committee constituted by Addl. Municipal Commissioner (Projects) comprising concerned DMC, Chief Engineer and the CA (Finance). Appeal from the order of the said committee may be referred to the Municipal Commissioner. If the contractor is in disagreement with the decision of Municipal Commissioner then the dispute shall be settled as per Sub-clause 20.6
20.8	Arbitration	Delete the wording of the Sub-Clause and replace with the following:

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		<p>Any dispute in respect of which the decision(s), if any, of the DAB has not become final and binding pursuant to Sub-clause 20.6 shall be finally settled by arbitration as set forth below. The arbitral tribunal shall have full power to open-up, review and revise any decision, opinion, instruction, determination, certificate or valuation of the Employer's Representative and any decision(s) of the DAB related to the dispute:</p> <p>a) A dispute with Indian or foreign contractors shall be finally settled by arbitration in accordance with the Indian Arbitration & Conciliation Act 1996 as amended on 23 October 2015 or any statutory amendment thereof. The arbitral tribunal shall consist of 3 arbitrators, one each to be appointed by the Employer and the Contractor. The third arbitrator shall be chosen by the two arbitrators so appointed by the parties and shall act as presiding arbitrator. In case of failure of the two arbitrators, appointed by the parties to reach upon a consensus within a period of 30 days from the appointment of the arbitrator appointed subsequently, the presiding arbitrator shall be appointed by the International Centre for Alternate Dispute Resolution in India. For the purposes of this Sub-Clause, the term "Indian Contractor" means a contractor who is registered in India and is a juridic person created under Indian law as well as a joint venture between such a contractor and a Foreign Contractor.</p> <p>b) Neither party shall be limited in the proceedings before such tribunal to the evidence or arguments already put before the Employer's Representative or the DAB, as the case may be, for the purpose of obtaining its/his said decisions. No such decision shall disqualify the Employer's Representative or any of the members of the DAB, as the case may be, from being called as a witness and giving evidence before the arbitrators on any matter whatsoever relevant to the dispute.</p> <p>c) Arbitration may be commenced prior to or after completion of the Works, provided always that the obligations of the Employer, the Employer's Representative, the Contractor and the DAB shall not be altered by reason of the</p>

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		<p>arbitration being conducted during the progress of the Works.</p> <p>d) If one of the parties fail to appoint its arbitrator in pursuance of Sub- Clause (a) above, within 30 days after receipt of the notice of the appointment of its arbitrator by the other party, then the International Centre for Alternate Dispute Resolution in India, both in cases of foreign contractors as well as Indian Contractors, shall appoint an arbitrator. A certified copy of the order of the International Centre for Alternate Dispute Resolution in India making such an appointment shall be furnished to each of the parties.</p> <p>e) Arbitration proceedings shall be held at Mumbai, India, and the language of the arbitration proceedings and that of all documents and communications between the parties shall be English. The Employer and Contractor hereby irrevocably attorn to the exclusive jurisdiction of the courts of Mumbai and all courts competent to hear appeals therefrom.</p> <p>f) The decision of the majority of arbitrators shall be final and binding upon both parties. The cost and expenses of arbitration proceedings will be paid as determined by the arbitral tribunal. However, the expenses incurred by each party in connection with the preparation, presentation, etc., of its case and also the fees and expenses paid to the arbitrator appointed by such party or on its behalf shall be borne by each party itself.</p>
14.5	Asset Replacement Schedule	<p>Delete the clause and replace by following</p> <p>14.5 Asset Replacement Schedule</p> <p>Payments shall be made in accordance with the provisions of Sub-Clause 14.18 [Asset Replacement Expenditure].</p> <p>On no account will payments be made for assets replaced which are not identified in the Asset Replacement Schedule unless they have been instructed as a Variation under Clause 13 [Variations and Adjustments].</p> <p>If Assets are replaced in advance of the date given in the Asset Replacement Schedule without prior</p>

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		approval of the Employer, payment will not be made. If assets are not replaced on the scheduled date, payment towards such asset replacement and routine monthly operation and maintenance payment shall not be released until such replacements have been effected.